

A
PRACTICAL TREATISE
ON THE
LAW OF ELECTIONS,
RELATING TO
ENGLAND, SCOTLAND,
AND
IRELAND.

BY WILLIAM THOMAS ROE, Esq.
OF LINCOLN'S-INN, BARRISTER-AT-LAW.

IN TWO VOLUMES.

VOL. II.

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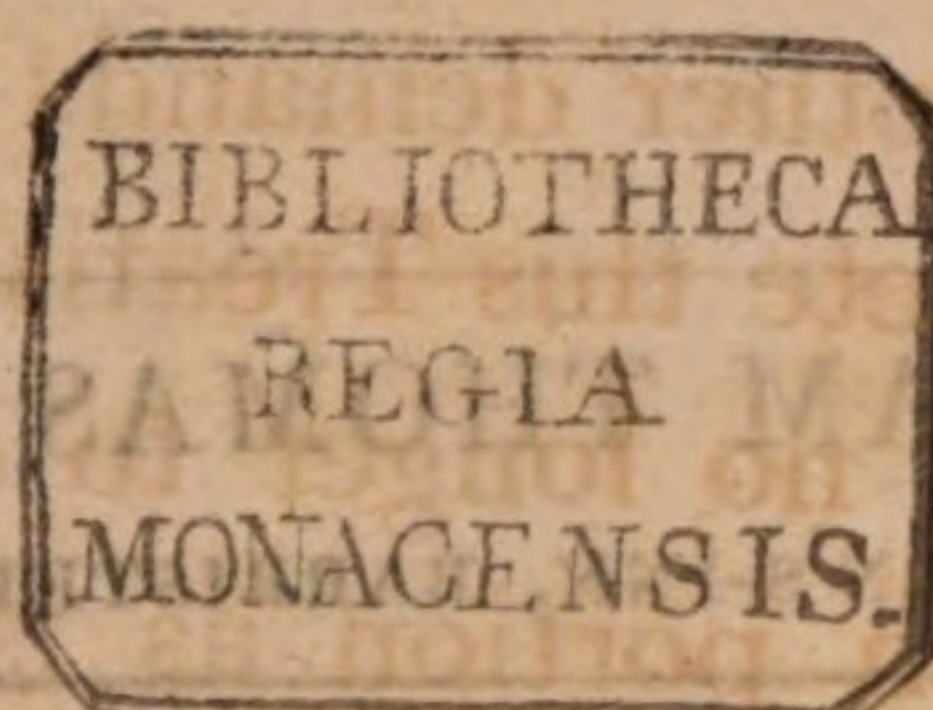
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OF THE PRACTICAL TREATISE
ON THE
LAW OF ELECTIONS

RELATING TO
ENGLAND, SCOTLAND,



LONDON:

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ADVERTISEMENT.

THE author has again to lament, that from the labor necessarily requisite in a work of this nature, he has not been able, consistently with the other demands upon his time, yet to complete this Treatise. He is induced, however, no longer to delay the publication of such portion as is printed, from the consideration that the subject is at this time of peculiar importance. There are several regulations with respect to the trial of controverted elections, which were introduced by acts of the last parliament, and which are not comprized in any book upon the Law of Elections. These belong almost exclusively to the three first parts of this work, and of those parts, more particularly to that which is now given. The acts which are herein contained complete

the collection of election statutes. The report of the case of *Sandwich*, 1808, which is inserted in the second chapter, is the only one of which the author is aware, upon a point which is very generally important.

LINCOLN'S-INN,

Jan. 30th, 1819.

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*These statutes are referred to, in the general table of statutes, in Vol. I, where blanks are left for the pages to be filled up, as above.

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* These statutes are referred to, in the general table of statutes, in Vol. I. where blanks are left for the pages to be filled up, as above.

OF THE JURISDICTION

It is therefore next to be considered in what
quarter, and by what means redress may be had,
where there is any ground of complaint, and
generally what cases are cognizable with a
view to such redress.

THE
LAW OF ELECTIONS.

IN THE EARLY PART OF THE HISTORY OF THE
TESTED ELECTIONS, THERE WAS NO SETTLED TRIBUNAL
FOR THEIR DECISION. THEY WERE DETERMINED SOME-
TIMES BY THE LORDS IN PARLIAMENT, AND SOMETIMES
IN THE LOWER HOUSE, MORE AND MORE

PART III.

FOR THEIR DECISION. THEY WERE DETERMINED SOME-
TIMES BY THE LORDS IN PARLIAMENT, AND SOMETIMES
IN THE LOWER HOUSE, MORE AND MORE

CHAPTER I.

**OF THE JURISDICTION FOR THE TRIAL OF MATTERS
RESPECTING ELECTIONS.**

SECTION 1. *Of the jurisdiction for the trial of contro-
verted elections, controverted rights of election, or con-
troverted rights of appointment of returning officers.*

SECTION 2. *In what cases resort may or may not be
had to such jurisdiction.*

SECTION 3. *Scotland.*

SECTION 4. *Ireland.*

THE matters which belong to the execution of
the writ or precept, and therein to the pro-
vince of a returning officer, have now been de-
tailed. It is impossible but that in proceedings
of such a nature, frauds, irregularities and acci-
dents should oftentimes arise, by the effect of
which the intention of the law may be wholly
or partially defeated, notwithstanding its pre-
cautionary provisions.

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It is therefore next to be considered in what quarter, and by what means redress may be had, where there is any ground of complaint, and generally what course is to be pursued with a view to such redress.

1 Doug. 5. 9.

In the earlier instances of questions upon contested elections, there was no settled tribunal for their decision. They were determined sometimes by the lords in parliament, and sometimes in *Westminster Hall*. By degrees however, as a seat in the lower house became more and more an object of ambition, contested elections were in consequence more frequent; and the commons at length began to feel, and dared to assert their independence(a). They could no longer endure that the upper house should decide upon the right of sitting in theirs, and they were equally unwilling that the judges in *Westminster Hall* should exercise this jurisdiction, they being men in those times exposed to the influence of the crown, and removable from their places at its pleasure.

1 Doug. 10. 72.
77.

It had been urged, that, the writ issuing out of chancery, and being returnable there, matters of

(a) The history of the former methods of trying cases of controverted elections, is traced in chronological order in the preface to

Glanville's Reports, and in the Introduction to Lord *Glenber-vie's Reports*, 1 Doug. 10. 14. and notes I. and K.

this sort were properly cognizable in that court. However, notwithstanding repeated attempts to the contrary, both towards the end of queen *Elizabeth's* reign, and in the beginning of that of *James* the first, the commons were able to establish their exclusive right of trying cases of controverted elections, and which right they have maintained and enjoyed now for two centuries past, regarding with the greatest jealousy any thing like an infringement upon it (*a*). The course they adopted, when they determined to insist upon their jurisdiction in these matters, was to select from the body of the house a certain number of such men as were distinguished for talents and integrity, under the name of a committee of privileges; and before them, these cases were agitated.

There seems to have been a standing committee of privileges and elections in 1588 (*b*). D'Ewes, 438. And on the 22d March, 1603, which was in the beginning of the first parliament of *James* the first, a committee of privileges and returns was appointed (*c*) consisting of twenty-five members,

(*a*) The anxiety of the house upon this point, appears in their resolutions of 26 Jan. 1703, upon the occasion of the proceedings in the cases of *Ashby v. White*, and *Barnardiston v. Soames*, for which see 1 vol. 478.

(*b*) See the entry of 25 Feb. in that year, as to the return for *New Rumney*. D'Ewes, 438.

(*c*) This committee was instructed to examine all matters questionable touching privileges and returns,

1 Journ. 149, 150.

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and this was then said to be, "an usual motion
"in the beginning of every parliament."

The practice of appointing such committees (a);

and to acquaint the house with their proceedings, from time to time, so as order might be taken according to the occasion, and agreeable with ancient custom and precedent. This was at the time of the affair of Sir *Francis Goodwin*, see 1 vol. 352.

(a) The number of members put upon these committees varied, according to the pleasure of the house, upon the nomination.

22 March, 1603. A committee of privileges and returns was appointed, consisting of all the privy council being members of the house, and twenty-four other members, 1 Journ. 934. *

2 March, 1623. A committee was appointed of twenty-one, and all that would come were to have voice, 1 Journ. 829. *

20 March, 1627. A committee of elections and privileges was appointed of eighty-six, 1 Journ. 873. *

On the 11 May, 1661. A committee of elections and privileges was appointed amounting to between two and three hundred, 8 Journ. 246, 247.

30 Oct. 1673. Upon the appointment of a committee of elections, and pri-

viliges, it was part of the order, after the appointment of several members by name, "that all that come should have voices," 9 Journ. 284. This order was always repeated afterwards, when the committee was named, 1 Doug. 74.

27 Jan. 1707. A committee was appointed to consider of methods for the more speedy and easy trying and determining of controverted elections, to which all the gentlemen of the long robe were added, 15 Journ. 516.

18 Feb. 1707. They reported, 1. that it was their opinion, that all matters that should come in question, touching returns or elections, should be heard at the bar of the house.

2. And that all questions at the trial of elections should, if any member should insist upon it, be determined by ballot. The house agreed, and ordered that these resolutions should be standing orders. Ibid. 551.

21 Feb. 1707. Several standing orders were made for regulating the manner of balloting. Ibid. 559. Accordingly, in the same session, the merits of the election for *Ashburton*, 26 Feb. 1707, were heard at the bar, and

* (These references, though the order is not chronologically right, are accurate.)

at the beginning of every session, continued until the 10th year of Geo. 3. with the exception of the session which commenced on the 16 Nov. 1708, when, instead of the usual committee of privileges and elections, a committee of privileges only was chosen on the 22nd Nov. and all election causes during that session were tried at the bar of the house. However, notwithstanding the appointment of committees whose province it ordinarily was to try election questions, they were nevertheless sometimes tried by ballot; and very frequently at the bar of the house, on motion made for that purpose (a). And in the two sessions which immediately preceded that in which the *Grenville* act passed, they were almost all so heard.

16 Journ. 6.

See the Journals about that period, *passim*.
32 Journ. 19 to 454.

the right of election coming in question, the ballot was demanded, and the case determined in that manner, 15 Journ. 577, (where there is an exact account of the way in which the ballot was taken.)

But it appears, that this was the only case so determined, and on the 22 Nov. 1708, being the beginning of the very next session, which was the first of a new parliament, a motion being made, and the question put in the words of the second resolution of 18 Feb. 1707, the house divided, and it passed in the negative, 178 to 169. 16 Journ. 7.

9 Dec. 1710. At the beginning of the next parliament, an unsuccessful attempt was made to renew the trial by ballot. "A motion being made, and the question being put, that all questions upon elections and returns of members to serve in parliament be determined by ballot, if demanded by any member," the house divided, and it passed in the negative, 247 to 39. 16 Journ. 429.

(a) See the cases of *Montgomery* and *Norfolk*, 23 May, 1685. 9 Journ. 715, 716. and *Thetford*, 1 and 2 June, 1685. 9 Journ. 723. 725.

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When election cases were tried by committees before that act, the decisions of such committees were subject to the revision of the house, and were rejected or confirmed by the voice of the majority there.

The consequence of this was, that although the decisions of the committees of privileges and elections were at first distinguished for wisdom, purity, and justice, as the house took the decisions more into their own hands, they became illegal, inconsistent and contradictory.

A judicature so essentially defective imperiously called for great alteration. It was obviously necessary that some jurisdiction should be created, to which resort might be had with confidence, and the decisions of which might be regarded with respect.

With a view to this end, the now existing system of the trial of controverted elections by select committees was introduced by the stat. 10 Geo. 3. c. 16.(a) commonly known by the

Provisions of
10 Geo. 3. c.
16.

(a) The stat. 10 Geo. 3. c. 16. "<i>An act to regulate the trials of controverted elections or returns of members to serve in parliament.</i>" [A. D. 1770.]	"mode of decision upon petitions, complaining of undue elections or returns of members to serve in parliament, frequently obstructs public business; occasions much expence,
"Whereas the present	

name of the *Grenville* act (from that of the member who brought in the bill), that statute

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Provisions of
10 Geo. 3. c. 16.

“ trouble, and delay to the
 “ parties; is defective, for
 “ want of those sanctions and
 “ solemnities which are es-
 “ tablished by law in other
 “ trials; and is attended
 “ with many other inconve-
 “ niences:” “ *For remedy*
 “ *thereof*, be it enacted, by
 “ the king’s most excellent
 “ majesty, by and with the
 “ advice and consent of the
 “ lords spiritual and tempo-
 “ ral, and commons, in this
 “ present parliament as-
 “ sembled, and by the autho-
 “ rity of the same, that after
 “ the end of the present ses-
 “ sions of parliament, when-
 “ ever a petition, complain-
 “ ing of an undue election or
 “ return of a member or mem-
 “ bers to serve in parliament,
 “ shall be presented to the
 “ house of commons, a day
 “ and hour shall, by the said
 “ house, be appointed for
 “ taking the same into con-
 “ sideration; and notice
 “ thereof in writing shall be
 “ forthwith given, by the
 “ speaker, to the petitioners,
 “ and the sitting members, or
 “ their respective agents, ac-
 “ companied with an order to
 “ them to attend the house,
 “ at the time appointed, by
 “ themselves, their counsel,
 “ or agents.

§ 2. “ Provided always,
 “ that no such petition shall

“ be taken into consideration
 “ within fourteen days after
 “ the appointment of the
 “ committee of privileges.

(See post, 11
Geo. 3. c. 42.
§ 2. post, 16.)

§ 3. “ Provided also, that
 “ the house may alter the
 “ day and hour so appointed
 “ for taking such petition
 “ into consideration, and ap-
 “ point some subsequent day
 “ and hour for the same
 “ as occasion shall require;
 “ giving to the respective
 “ parties the like notice of
 “ such alteration, and order
 “ to attend on the said sub-
 “ sequent day and hour, as
 “ aforesaid.

§ 4. “ And be it further
 “ enacted, that at the time
 “ appointed for taking such
 “ petition into consideration,
 “ and previous to the reading
 “ the order of the day for
 “ that purpose, the serjeant
 “ at arms shall be directed
 “ to go with the mace to the
 “ places adjacent, and require
 “ the immediate attendance
 “ of the members on the bu-
 “ siness of the house; and
 “ that after his return the
 “ house shall be counted,
 “ and if there be less than one
 “ hundred members present,
 “ the order for taking such
 “ petition into considera-
 “ tion shall be immediately
 “ adjourned to a particular
 “ hour on the following day,
 “ *Sunday and Christmas-day*

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Provisions of
10 Geo. 3. c. 16.

setting forth the grounds upon which it was deemed expedient to pass it, namely, that the

(See 36 Geo. 3. c. 59. § 1. *post*, 44.)

“ always excepted; and the
“ house shall then adjourn to
“ the said day; and the pro-
“ ceedings of all committees
“ subsequent to such notice
“ from the said serjeant, shall
“ be void; and, on the said
“ following day, the house
“ shall proceed in the same
“ manner; and so, from day
“ to day, till there be an at-
“ tendance of one hundred
“ members at the reading of
“ the order of the day, to
“ take such petition into con-
“ sideration.

(See 28 Geo. 3. c. 52. § 10. 11. *post*, 28.)

§ 5. “ And be it further
“ enacted, that if after sum-
“ moning the members, and
“ counting the house as
“ aforesaid, one hundred
“ members shall be found to
“ be present, the petitioners,
“ by themselves, their coun-
“ sel, or agents, and the
“ counsel or agents of the
“ sitting members, shall be
“ ordered to attend at the
“ bar, and then the door of
“ the house shall be locked,
“ and no member shall be
“ suffered to enter into or
“ depart from the house until
“ the petitioners, their coun-
“ sel, or agents, and the
“ counsel or agents for the
“ sitting members, shall be
“ directed to withdraw, as
“ hereinafter is mentioned;
“ and when the door shall be
“ locked, as aforesaid, the

“ order of the day shall be
“ read, and the names of all
“ the members of the house,
“ written or printed on di-
“ stinct pieces of parchment
“ or paper, being all as near
“ as may be of equal size,
“ and rolled up in the same
“ manner, shall be put in
“ equal numbers into six
“ boxes or glasses, to be
“ placed on the table for that
“ purpose, and shall there be
“ shaken together; and then
“ the clerk, or clerk assistant
“ attending the house, shall
“ publicly draw out of the
“ said six boxes or glasses,
“ alternately, the said pieces
“ of parchment or paper, and
“ deliver the same to the
“ speaker, to be by him
“ read to the house; and so
“ shall continue to do, until
“ forty-nine names of the
“ members then present be
“ drawn.

§ 6. “ Provided always,
“ that if the name of any
“ member who shall have
“ given his vote at the elec-
“ tion so complained of as
“ aforesaid, or who shall be a
“ petitioner complaining of
“ an undue election or re-
“ turn, or against whose re-
“ turn a petition shall be then
“ depending, or whose re-
“ turn shall not have been
“ brought in fourteen days,
“ shall be drawn; his name

then present mode of decision upon petitions,
complaining of undue elections or returns, fre-

Sect. 1.

Provisions of
10 Geo. 3. c. 16.

“ shall be set aside, with the
“ names of those who are
“ absent from the house.

§ 7. “ Provided also, that
“ if the name of any member
“ of sixty years of age or
“ upwards be drawn, he shall
“ be excused from serving
“ on the select committee,
“ to be appointed as herein-
“ after is mentioned, if he
“ require it, and verify the
“ cause of such requisition
“ upon oath.

§ 8. “ Provided also, that
“ if the name of any member
“ who has served on such
“ select committee during
“ the same session be drawn,
“ he shall, if he requires it,
“ be excused from serving
“ again in any such select
“ committee, unless the
“ house shall, before the day
“ appointed for taking the
“ said petition into consi-
“ deration, have resolved,
“ that the number of mem-
“ bers who have not served
“ on such select committee,
“ in the same session, is in-
“ sufficient to fulfil the pur-
“ poses of this act, respect-
“ ing the choice of such select
“ committee.

§ 9. “ Provided always,
“ that no member, who after
“ having been appointed to
“ serve in any such select
“ committee shall, on ac-

“ count of inability or acci-
“ dent, have been excused
“ from attending the same
“ throughout, shall be deemed
“ to have served on any such
“ select committee.

§ 10. “ And be it further
“ enacted, that if any other
“ member shall offer and
“ verify upon oath any other
“ excuse, the substance of
“ the allegations so verified
“ upon oath shall be taken
“ down by the said clerk, in
“ order that the same may be
“ afterwards entered on the
“ journals, and the opinion
“ of the house shall be taken
“ thereon; and if the house
“ shall resolve, that the said
“ member is unable to serve,
“ or cannot without great and
“ manifest detriment serve,
“ in such select committee,
“ he also shall be excused
“ from such service.

§ 11. “ And be it further
“ enacted, that instead of
“ the members so set aside
“ and excused, the names
“ of other members shall
“ be drawn; who may, in
“ like manner, be set aside
“ or excused, and others
“ drawn to supply their
“ places, until the whole
“ number of forty-nine mem-
“ bers, not liable to be so
“ set aside or excused, shall
“ be complete; and the peti-

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Provisions of
10 Geo. 3. c. 16.

(See 11 Geo. 3.
c. 42. § 6. post,
17.
28 Geo. 3. c.
52. § 14. post, 30.
42 Geo. 3. c. 84.
§ 4. post, 50.
53 Geo. 3. c.
71. § 20. post,
62.)

quently obstructed public business, occasioned much expence, trouble, and delay to the parties,

“ tioners, or their agents,
“ shall then name one, and
“ the sitting members, or
“ their agents, another, from
“ among the members then
“ present, whose names shall
“ not have been drawn, to be
“ added to those who shall
“ have been so chosen by lot.

§ 12. “ Provided always,
“ that either of the members
“ so nominated shall or may
“ be set aside, for any of the
“ same causes as those chosen
“ by lot; or shall, if he re-
“ quires it, be excused from
“ serving on the said select
“ committee; and the party
“ who nominated the member
“ so set aside or excused,
“ shall nominate another in
“ his stead, and so continue
“ to do as often as the case
“ shall happen, until his no-
“ minee is admitted.

§ 13. “ And be it further
“ enacted, that as soon as
“ the said forty-nine mem-
“ bers shall have been so
“ chosen by lot, and the two
“ members to be added there-
“ unto shall have been so
“ nominated as aforesaid, the
“ door of the house shall be
“ opened, and the house may
“ proceed upon any other
“ business; and lists of the
“ forty-nine members so
“ chosen by lot shall then be
“ given to the petitioners,
“ their counsel, or agents,

“ and the counsel or agents
“ for the sitting members,
“ who shall immediately with-
“ draw, together with the
“ clerk appointed to attend
“ the said select committee;
“ and the said petitioners and
“ sitting members, their coun-
“ sel or agents, beginning on
“ the part of the petitioners,
“ shall alternately strike off
“ one of the said forty-nine
“ members, until the said
“ number shall be reduced
“ to thirteen; and the said
“ clerk, within one hour at
“ farthest from the time of
“ the parties withdrawing
“ from the house, shall de-
“ liver in to the house the
“ names of the thirteen mem-
“ bers then remaining; and
“ the said thirteen members,
“ together with the two
“ members nominated as
“ aforesaid, shall be sworn at
“ the table, “ *well and truly*
“ *to try the matter of the peti-*
“ *tion referred to them, and a*
“ *true judgment to give ac-*
“ *cording to the evidence;*”
“ and shall be a select com-
“ mittee to try and determine
“ the merits of the return or
“ election appointed by the
“ house to be that day taken
“ into consideration; and the
“ house shall order the said
“ select committee to meet at
“ a certain time to be fixed
“ by the house, which time

Sect. 1.

Provisions of
10 Geo. 3. c. 16.

was defective for want of the sanctions and solemnities established by law in other trials; and attended with many other inconveniences.

“ shall be within twenty-four
“ hours of the appointment
“ of the said select com-
“ mittee, unless a *Sunday* or
“ *Christmas-day* shall inter-
“ vene; and the place of
“ their meeting and sitting
“ shall be some convenient
“ room or place adjacent to
“ the house of commons, or
“ court of requests, properly
“ prepared for that purpose.

§ 14. “ Provided always,
“ that on the parties with-
“ drawing as aforesaid, the
“ house shall continue sit-
“ ting; and the said fifty-one
“ members, so chosen and
“ nominated, shall not depart
“ the house till the time for the
“ meeting of the said select
“ committee shall be fixed.

§ 15. “ Provided always,
“ and be it further enacted,
“ that if upon the drawing
“ out of the name of any
“ member by lot, as afore-
“ said, the said petitioners or
“ sitting members, or their
“ agents, shall declare, that
“ such member is intended
“ to be one of the two nomi-
“ nees to be nominated by
“ them respectively, and if
“ such member shall consent
“ to such nomination, the
“ name of such member so
“ drawn by lot shall be set
“ aside, and, unless objected
“ to as aforesaid, he shall
“ serve as such nominee, and

“ the name of another mem-
“ ber shall be drawn to supply
“ his place, to complete the
“ number of forty-nine mem-
“ bers to be drawn by lot;
“ and if the said petitioners
“ or sitting members, or their
“ agents, shall not respec-
“ tively nominate a member
“ then present, who shall be
“ admitted according to the
“ directions of this act, then
“ the want of such nomina-
“ tion shall be supplied, by
“ drawing out, instead there-
“ of, the name of one or two
“ members, as the case shall
“ require; who shall be drawn
“ by lot in the like manner,
“ and subject to the like ob-
“ jections and excuses as the
“ other forty-nine members
“ already drawn by lot, and
“ shall be added to the lists
“ of the said forty-nine mem-
“ bers, and shall be liable to
“ be struck off in the same
“ manner; leaving always
“ the number of fifteen mem-
“ bers in the whole, and no
“ more, as a select com-
“ mittee, for the purposes
“ aforesaid.

§ 16. “ And, for the
“ greater dispatch and cer-
“ tainty in the proceeding
“ hereinbefore described, be
“ it further enacted, that the
“ names of all the members
“ so written and rolled up as
“ hereinbefore directed, shall,

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10 Geo. 3. c. 16.

By the provisions of this act, some of which have been since further regulated, the house of com-

“ previous to the day ap-
“ pointed for taking any such
“ petition into consideration,
“ be prepared by the said
“ clerk, or clerk assistant,
“ and by him put into a box
“ or parcel, in the presence
“ of the speaker, together
“ with an attestation, signed
“ by the said clerk, or clerk
“ assistant, purporting, that
“ the names of all the mem-
“ bers were by him put therein
“ the day of in
“ the year which said
“ box or parcel the speaker
“ shall seal with his own
“ seal; and to the outside
“ thereof shall annex an at-
“ testation, signed by him-
“ self, purporting, that the
“ said box or parcel was on
“ the day of
“ in the year
“ made up in his presence,
“ in the manner directed by
“ this act; and that as soon
“ as the parties shall be with-
“ drawn as aforesaid, and
“ before the house shall
“ enter on any other business,
“ any member may require,
“ that the names of all the
“ members, which remain
“ undrawn, shall be drawn,
“ and read aloud by the
“ said clerk or clerk assist-
“ ant.

§ 17. “ And be it further
“ enacted, That the said
“ select committee shall, on
“ their meeting, elect a chair-

“ man from among such of
“ the members thereof as
“ shall have been chosen by
“ lot; and if in the election
“ of a chairman there be an
“ equal number of voices,
“ the member whose name
“ was first drawn in the house
“ shall have a casting voice;
“ so likewise, in case there
“ should ever be occasion
“ for electing a new chair-
“ man, on the death, or ne-
“ cessary absence of the
“ chairman first elected.

§ 18. “ And be it further
“ enacted, that the said se-
“ lect committee shall have
“ power to send for persons,
“ papers, and records; and
“ shall examine all the wit-
“ nesses who shall come be-
“ fore them upon oath; and
“ shall try the merits of the
“ return, or election, or
“ both; and shall determine,
“ by a majority of voices of
“ the said select committee,
“ whether the petitioners or
“ the sitting members, or
“ either of them, be duly
“ returned or elected, or
“ whether the election be
“ void; which determination
“ shall be final between the
“ parties to all intents and
“ purposes; and the house,
“ on being informed thereof
“ by the chairman of the
“ said select committee, shall
“ order the same to be en-
“ tered in their journals, and

mons, in each instance, where a petition complaining of an undue election or return, is pre-

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10 Geo. 3. c. 16.

“ give the necessary direc-
“ tions for confirming or al-
“ tering the return, or for the
“ issuing a new writ for a
“ new election, or for carry-
“ ing the said determination
“ into execution, as the case
“ may require.

§ 19. “ And be it further
“ enacted, that the said select
“ committee shall sit every
“ day (*Sunday* and *Christmas-*
“ *day* only excepted) and
“ shall never adjourn for a
“ longer time than twenty-
“ four hours, unless a *Sunday*
“ or a *Christmas-day* inter-
“ vene, without leave first
“ obtained from the house,
“ upon motion, and special
“ cause assigned for a longer
“ adjournment; and in case
“ the house shall be sitting at
“ the time to which the said
“ select committee is ad-
“ journed, then the business
“ of the house shall be stayed,
“ and a motion shall be made
“ for a further adjournment,
“ for any time to be fixed by
“ the house, not exceeding
“ twenty-four hours, unless
“ a *Sunday* or *Christmas-day*
“ intervene.

§ 20. “ And be it further
“ enacted, that where the
“ time prescribed by this act
“ for the meeting, sitting, or
“ adjournment of the said
“ select committee, shall, by
“ the intervention of a *Sun-*
“ *day* or *Christmas-day*, ex-

“ ceed twenty-four hours,
“ such meeting, sitting, or
“ adjournment, shall be
“ within twenty-four hours
“ from the time of appointing
“ or fixing the same, exclu-
“ sive of such *Sunday* or
“ *Christmas-day*.

§ 21. “ And be it further
“ enacted, that no member
“ of the said select committee
“ shall be allowed to absent
“ himself from the same,
“ without leave obtained from
“ the house, or an excuse
“ allowed by the house at
“ the next sitting thereof, on
“ special cause shewn and
“ verified upon oath; and the
“ said select committee shall
“ never sit, until all the mem-
“ bers to whom such leave
“ has not been granted, nor
“ excuse allowed, are met;
“ and in case they shall not
“ all meet within one hour
“ after the time to which
“ the said select committee
“ shall have been adjourned,
“ a further adjournment shall
“ be made in the manner as
“ before directed, and re-
“ ported, with the cause
“ thereof, to the house.

§ 22. “ And be it further
“ enacted, That the chair-
“ man of the said select com-
“ mittee shall, at the next
“ meeting of the house,
“ always report the name of
“ every member thereof who
“ shall have been absent

(See 28 Geo. 3.
c. 52. § 10. post,
28.)(See 28
Geo 3.
c. 52. §
10. post,
28.)

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sented, delegates from its own body, a certain number of members, elected in some degree by

“therefrom without such
“leave or excuse as afore-
“said; and such member
“shall be directed to attend
“the house at the next sit-
“ting thereof, and shall then
“be ordered to be taken into
“the custody of the serjeant
“at arms attending the house,
“for such neglect of his
“duty, and otherwise pu-
“nished or censured at the
“discretion of the house;
“unless it shall appear to
“the house, by facts specially
“stated and verified upon
“oath, that such member
“was, by a sudden accident,
“or by necessity, prevented
“from attending the said se-
“lect committee.

(See 28 Geo. 3.
c. 52. § 17. *post*,
31.)

§ 23. “And be it further
“enacted, that if more than
“two members of the said
“select committee shall on
“any account be absent
“therefrom, the said select
“committee shall adjourn in
“the manner hereinbefore
“directed; and so, from time
“to time, until thirteen mem-
“bers are assembled.

(See 28 Geo. 3.
c. 52. § 17. *post*,
31.)

§ 24. “And be it further
“enacted, that in case the
“number of members able to
“attend the said select com-
“mittee shall, by death or
“otherwise, be unavoidably
“reduced to less than thir-
“teen, and shall so continue
“for the space of three sit-
“ting days, the said select

“committee shall be dis-
“solved, and another chosen
“to try and determine the
“matter of such petition in
“manner aforesaid; and all
“the proceedings of the said
“former select committee
“shall be void, and of no effect.

§ 25. “And be it further
“enacted, that if the said se-
“lect committee shall come
“to any resolution other than
“the determination above-
“mentioned, they shall, if
“they think proper, report
“the same to the house for
“their opinion, at the same
“time that the chairman of
“the said select committee
“shall inform the house of
“such determination; and
“the house may confirm or
“disagree with such resolu-
“tion, and make such orders
“thereon, as to them shall
“seem proper.

§ 26. “Provided always,
“that if any person sum-
“moned by the said select
“committee, shall disobey
“such summons, or if any
“witness before such select
“committee shall prevari-
“cate, or shall otherwise
“misbehave in giving, or re-
“fusing to give evidence,
“the chairman of the said
“select committee, by their
“direction, may, at any
“time, during the course of
“their proceedings, report
“the same to the house, for

chance, and in some degree by choice of the parties, and these being formed into a select

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“ the interposition of their
“ authority or censure, as
“ the case shall require.

§ 27. “ And be it further
“ enacted, that whenever the
“ said select committee shall
“ think it necessary to de-
“ liberate amongst them-
“ selves, upon any question
“ which shall arise in the
“ course of the trial, or upon
“ the determination thereof,
“ or upon any resolution con-
“ cerning the matter of the
“ petition referred to them
“ as aforesaid; as soon as the
“ said select committee shall
“ have heard the evidence
“ and counsel on both sides
“ relative thereunto, the room
“ or place wherein they shall
“ sit shall be cleared, if they
“ shall think proper, while
“ the members of the said
“ select committee consider
“ thereof; and all such ques-
“ tions, as well as such de-
“ termination, and all other
“ resolutions, shall be by a
“ majority of voices; and if
“ the voices shall be equal,
“ the chairman shall have a
“ casting voice.

§ 28. “ Provided always,
“ that no such determination
“ as aforesaid shall be made,
“ nor any question be pro-
“ posed, unless thirteen
“ members shall be present;
“ and no member shall have
“ a vote on such determina-
“ tion, or any other ques-
“ tion or resolution, who has

“ not attended during every
“ sitting of the said select
“ committee.

§ 29. “ And be it further
“ enacted, that the oaths by
“ this act directed to be taken
“ in the house, shall be ad-
“ ministered by the said clerk
“ or clerk assistant, in the
“ same manner as the oaths
“ of allegiance and supre-
“ macy are administered in
“ the house of commons;
“ and that the oaths by this
“ act directed to be taken
“ before the said select com-
“ mittee, shall be administer-
“ ed by the clerk attending
“ the said select committee;
“ and that all persons who
“ shall be guilty of wilful and
“ corrupt perjury in any evi-
“ dence which they shall give
“ before the house, or the
“ said select committee, in
“ consequence of the oath
“ which they shall have taken
“ by the direction of this act,
“ shall, on conviction thereof,
“ incur and suffer the like
“ pains and penalties to which
“ any other person, convict-
“ ed of wilful and corrupt per-
“ jury, is liable by the laws
“ and statutes of this realm.

§ 30. “ And be it further
“ enacted, that this act shall
“ continue in force seven
“ years, and till the end of
“ the session of parliament
“ next after the expiration of
“ the said seven years, and no
“ longer.”

(See 28 Geo. 3.
c. 52. § 17. post.
31.)

(See 14 Geo. 3.
c. 15. post. 19.)

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committee, it becomes their duty, under the sanction of an oath, well and truly to try the matter of the petition referred to them, and to give a true judgment according to the evidence.

Provisions of
11 Geo. 3. c. 42.

The above statute was explained and amended in the following year by the stat. 11 G. 3. c. 42. (a)

(a) The stat. 11 Geo. 3, c. 42. “ *An Act to explain and amend an Act, made in the last Session of Parliament, intituled, An Act to regulate the Trials of controverted Elections, or Returns of Members to serve in Parliament.*”—[A. D. 1771.]

“ Whereas an act was passed in the last session of parliament, intituled, *An act to regulate the trials of controverted elections, or returns of members to serve in parliament*; and whereas further provisions may be necessary to prevent all obstructions and difficulties, which in certain cases may arise in the execution of the said act:” “ *Be it therefore enacted, by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, if several parties, on distinct interests or grounds of complaint, shall present separate petitions, complaining of an undue elec-*

tion or return of a member or members to serve in parliament, the same notices and orders shall be given to all such parties, or their respective agents, as by the said act are directed to be given to the sitting members, or the petitioners therein mentioned, or their respective agents.

§ 2. “ And be it further enacted, that the clause in the said act, which provides that no petition shall be taken into consideration within fourteen days after the appointment of the committee of privileges, be repealed; and that from henceforth no petition, complaining of an undue election, or return of a member or members to serve in parliament, shall be taken into consideration within fourteen days after the commencement of the session of parliament in which it is presented, nor within fourteen days after the return to which it relates shall be brought into the office of the clerk of the crown.

§ 3. “ And be it further enacted, that if at the time of drawing by lot the names

(See 10
Geo. 3.
c. 16. § 1.
ante, 7.)

(See 10
G. 3. c.
16. §. 2.
ante, 7.)

10 Geo. 3. c.
16. ante, 6.

by which further provisions were made to prevent obstructions and difficulties, which it was

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11 Geo. 3. c. 42.

“ of the members, in manner
“ prescribed by the said act,
“ the number of forty-nine
“ members, not set aside nor
“ excused, cannot be com-
“ pleted, the house shall pro-
“ ceed in the manner they are
“ directed by the said act
“ to proceed, in case there
“ be less than one hundred
“ members present at the
“ time therein prescribed for
“ counting the house, and so,
“ from day to day, as often
“ as the case shall happen.

§ 4. “ And be it further
“ enacted, that on the day
“ appointed for taking any
“ petition, complaining of an
“ undue election, or return
“ of a member or members
“ to serve in parliament, into
“ consideration, the house
“ shall not proceed to any
“ other business whatsoever,
“ except the swearing of
“ members, previous to the
“ reading of the order of the
“ day for that purpose.

§ 5. “ And be it further
“ enacted, that if the select
“ committee shall have oc-
“ casion to apply or report
“ to the house, in relation to
“ adjournment of the said
“ select committee, the ab-
“ sence of the members there-
“ of, or the non-attendance
“ or misbehaviour of wit-
“ nesses summoned to ap-
“ pear, or appearing before
“ them, and the house shall
“ be then adjourned for more

“ than three days, the said
“ select committee may also
“ adjourn to the day appoint-
“ ed for the meeting of the
“ house.

§ 6. “ And be it further
“ enacted, that if on a com-
“ plaint by petition of an un-
“ due election or return, there
“ shall be more than two
“ parties before the house on
“ distinct interests, or com-
“ plaining or complained of
“ upon different grounds,
“ whose right to be elected
“ or returned may be affected
“ by the determination of the
“ said select committee, each
“ of the said parties shall
“ successively strike off a
“ member from the forty-
“ nine members to be chosen
“ by lot, until the said num-
“ ber be reduced to thirteen,
“ in the same manner as by
“ the said act is directed for
“ the striking off a member
“ alternately by the parties
“ therein mentioned; and the
“ lists of the forty-nine mem-
“ bers chosen by lot shall,
“ for this purpose, be given
“ to all the said parties, and
“ the order in which the said
“ parties shall so strike off the
“ said members shall be de-
“ termined by lot after they
“ are withdrawn from the
“ bar, and in such case, nei-
“ ther of the said parties
“ (there being more than
“ two) shall be permitted to
“ name a member to be added

(See 28 Geo. 3.
c. 52. § 14, 15.
post, 29, 30.)

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11 Geo. 3. c. 42.

foreseen might arise in the execution of the law as it then stood ; and the application of this new jurisdiction was adapted with greater convenience to certain cases not before sufficiently contemplated ; namely, those of petitions, complaining of undue elections or returns, presented by several parties on distinct interests or grounds of complaint.

These statutes of 10 Geo. 3. c. 16. and 11 Geo. 3. c. 42. which were experimental and tem-

(See 53 Geo.
3. c. 71. § 20.
post, 63.)

“ to the members so drawn
“ by lot as aforesaid ; but
“ that as soon as the list of
“ thirteen members shall be
“ returned by the parties to
“ the house, such thirteen
“ members shall immediately
“ withdraw, and shall, by
“ themselves, choose two
“ members then present in
“ the house, whose names
“ shall not have been drawn,
“ to be added to the said
“ thirteen members ; and
“ shall, within one hour from
“ the time of their with-
“ drawing, report the names
“ of such two members to the
“ house ; which two members
“ shall be liable to be set
“ aside, on the like objections
“ for which nominees may be
“ set aside by virtue of the
“ said act ; and in case such
“ two members, or either of
“ them, shall be set aside for
“ any of the causes aforesaid,
“ then the said thirteen mem-
“ bers shall choose one or

“ two other members as the
“ case shall require, until
“ two members are chosen,
“ against whom none of the
“ objections to nominees
“ mentioned in the said act
“ shall be taken and allowed ;
“ and that the names of such
“ two members shall be then
“ added to the said list of
“ thirteen members ; and all
“ the said fifteen members
“ shall be sworn at the table,
“ and they shall be the select
“ committee appointed for
“ the purposes expressed in
“ this and the said former
“ act.

§ 7. “ And be it further
“ enacted, that where the
“ said nominees are by this
“ act directed to be named by
“ the said thirteen members,
“ no member present at the
“ time of the ballot shall de-
“ part from the house until
“ the time for the meeting of
“ the said select committee
“ shall be fixed.”

porary (a) in the first instance, were found by experience to be adequate to the purpose, and were in consequence made perpetual by the stat. 14 Geo. 3. c. 15. (b).

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Provisions of
14 Geo. 3. c. 15.

The stat. 25 Geo. 3. c. 84. (c) further extended

Provisions of
25 Geo. 3. c. 84.

(a) The stat. 10 Geo. 3. c. 16. was by § 30 of the act to have continued for seven years; and that of the 11 Geo. 3. c. 42. though not enacted for any specific time, being explanatory of the former, may be considered as having been intended to have had the same duration.

(b) The stat. 14 Geo. 3. c. 15.—“ *An Act for making perpetual two Acts, passed in the tenth and eleventh Years of the Reign of his present Majesty, for regulating the Trials of controverted Elections, or Returns of Members to serve in Parliament.*”

[A. D. 1774.]

10 Geo.
3. c. 16.
ante, 6.

“Whereas an act passed in the tenth year of the reign of his present majesty, intituled, *An act to regulate the trials of controverted elections, or returns of members to serve in parliament*, which act was made to continue for a limited time only; and whereas another act, passed in the

11 Geo.
3. c. 42.
ante, 16.

eleventh year of the reign of his said majesty, intituled, *An act to explain and amend an act, made in the last session of parliament, in-*

tituled, An act to regulate the trials of controverted elections, or returns of members to serve in parliament; and whereas the provisions of the said recited acts are well adapted to procure to the commons of this realm a free and impartial trial of controverted elections of members to serve in parliament, and have been found by experience to be practicable and beneficial:” May it therefore please your majesty, that it may be enacted, and be it enacted, by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said recited acts, passed in the tenth and eleventh years of his present majesty, shall be, and are hereby made, perpetual.”

(c) The stat. 25 Geo. 3. c. 84.—“ *An Act to limit the Duration of Polls and Scrutinies, and for making other Regulations touching the*

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25 Geo. 3. c. 84.

the operation of the former acts (which had been hitherto confined to cases of petitions complain-

“ *Election of Members to serve*
“ *in Parliament, for Places*
“ *within England and Wales,*
“ *and for Berwick upon Tweed;*
“ *and also for removing Diffi-*
“ *culties which may arise for*
“ *want of Returns being made*
“ *of Members to serve in Par-*
“ *liament.*”—[A. D. 1785.]

(For § 1, see 1 vol. 623.

§ 2, *ib.* 710. § 3, *ib.* 629.

§ 4, *ib.* 533. § 5, *ib.* 648.

§ 6, *ib.* 710. § 7, *ib.* 584.

§ 8, *ib.* 649. § 9, *ib.* 626.)

§ 10. “ And whereas an act

“ was passed in the tenth year

“ of his present majesty’s reign

“ (intituled, *An act to regu-*

“ *late the trials of controverted*

“ *elections, or returns of mem-*

“ *bers to serve in parliament*);

“ and another act was passed

“ in the eleventh year of his

“ said majesty’s reign, for

“ explaining and amending

“ the said former act; and

“ whereas no provision is

“ made therein for the hear-

“ ing and determining any

“ petition, unless the same

“ shall complain of an undue

“ election, or return of mem-

“ bers to serve in parliament;”

“ *Be it therefore enacted, that*

“ from and after the first day

“ of August, one thousand

“ seven hundred and eighty-

“ five, if upon any writ or

“ writs to be issued for the

“ election of any member or

“ members to serve in par-

“ liament, no return shall be

“ made to the same on or be-

“ fore the day on which such

“ writ is made returnable; or

“ if a writ shall have been

“ issued during any session

“ or prorogation of parlia-

“ ment, and no return shall

“ be made to the same within

“ fifty-two days after the day

“ on which such writ bears

“ date; or if the return, made

“ in either of such cases, shall

“ not be a return of a mem-

“ ber or members, according

“ to the requisition thereof,

“ but contain special matters

“ only concerning such elec-

“ tion, it shall and may be

“ lawful for any person or

“ persons, having had, or

“ claiming to have had, a

“ right to vote at such elec-

“ tion, or claiming to have

“ had a right to be returned

“ as duly elected thereat,

“ who shall think himself or

“ themselves aggrieved, to

“ petition the house of com-

“ mons concerning the same;

“ and upon such petition

“ being presented, a day

“ and hour shall be appointed

“ for taking the same into

“ consideration, and notice

“ thereof, in writing, shall be

“ forthwith given by the

“ speaker to the petitioners,

“ and to the returning of-

“ ficer or officers by whom

“ such return ought to have

“ been made, or shall have

“ been made, accompanied

10 Geo. 3. c.
16. ante, 6.

11 Geo. 3. c.
42. ante, 16.

ing of undue elections or returns), to cases where there should be no return, or where the re-

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Provisions of
25 Geo. 3. c. 84.

“ with an order to him or
“ them to attend the house
“ at the time appointed, by
“ himself or themselves, his
“ or their counsel or agents;
“ and a select committee shall
“ be appointed according to
“ the directions of the said
“ two recited acts for regu-
“ lating the trial of con-
“ troverted elections; which
“ committee shall try and de-
“ termine whether any and
“ which of the person or per-
“ sons named in such peti-
“ tion, ought to have been
“ returned, or whether a new
“ writ ought to issue; which
“ determination shall be final
“ to all intents and purposes,
“ and the house being in-
“ formed thereof by the
“ chairman of the said select
“ committee, shall order the
“ same to be entered in their
“ journals, and give the ne-
“ cessary directions for or-
“ dering a return to be made
“ or for altering the return,
“ if made, or for the issuing
“ a new writ for a new elec-
“ tion, or for carrying the
“ said determination into ex-
“ ecution, as the case may
“ require.

§ 11. “ And be it further
“ enacted, that all and every
“ the rules, regulations, au-
“ thorities, and powers, given
“ or prescribed by either of
“ the said recited acts for re-
“ gulating the trial of con-

“ troverted elections, with
“ respect to select commit-
“ tees to be appointed by
“ virtue of the said acts, or
“ either of them, shall be in
“ full force and effect, with
“ respect to select commit-
“ tees to be appointed by vir-
“ tue of this present act, in as
“ full and ample a manner
“ as if the same were herein
“ repeated, and particular-
“ ly and especially enacted
“ concerning the same.

§ 12. “ Provided always,
“ that if the returning of-
“ ficer or officers, by whom
“ such return ought to have
“ been made, or has been
“ made, cannot be found so
“ as to be served with a
“ notice or order herein-be-
“ fore mentioned, or being
“ served, shall not appear by
“ himself or themselves, his
“ or their counsel or agents,
“ at the day or time appoint-
“ ed for taking such petition
“ into consideration, it shall
“ and may be lawful for the
“ house to permit or autho-
“ rize any person to appear in
“ the stead of him or them;
“ and in case there shall be
“ more petitions than one pre-
“ sented, complaining of such
“ return, or omission of a re-
“ turn, on distinct interests,
“ or complaining upon dif-
“ ferent grounds, the house
“ shall determine, from the
“ nature of the case, whe-

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turn should not be made in sufficient time, or not according to the requisition of the writ or precept.

Provisions of
28 Geo. 3. c. 52.

The next act which passed upon this subject was that of the 28 G. 3. c. 52. (a) which restricts

“ther the returning officer
“or officers, or person ap-
“pearing in the stead of him
“or them, shall, together
“with such petitioners, be
“entitled to strike off from
“the list of members, drawn
“by lot, in the manner di-
“rected by the said act,
“passed in the eleventh year
“of the reign of his present
“majesty, in the case where
“there shall be more than
“two parties before the
“house, or whether such
“list shall be reduced by the
“parties severally presenting
“the said petitions only.”

(For § 13, see 1 vol. 629.
§ 14, *ib.* 813. § 15, *ib.* 630.
§ 16, *ib.* 628.)

(a) The stat. 28 Geo. 3.
c. 52.—“*An Act for the fur-
“ther Regulation of the Trials
“of controverted Elections, or
“Returns of Members to serve
“in Parliament.*”

[A. D. 1788.]

“Whereas, by an act of
“parliament passed in the
“tenth year of the reign of
“his present majesty, inti-
“tuled, *An act to regulate
“the trials of controverted
“elections, or returns of mem-
“bers to serve in parliament,
“certain regulations were*

“established, for a time
“therein limited, for the
“trials of controverted elec-
“tions, or returns of mem-
“bers to serve in parliament:
“and whereas, by an act
“passed in the eleventh year
“of the reign of his present
“majesty, intituled, *An act
“to explain and amend an
“act made in the last session
“of parliament, intituled, An
“act to regulate the trials
“of controverted elections, or
“returns of members to serve
“in parliament, further re-
“gulations were made there-
“in: and whereas the provi-
“sions of the said acts were,
“by an act passed in the
“fourteenth year of the reign
“of his present majesty, con-
“tinued and made perpetual:
“and whereas, by an act
“passed in the twenty-fifth
“year of the reign of his
“present majesty, intituled,
“*An act to limit the duration
“of polls and scrutinies, and
“for making other regula-
“tions touching the election
“of members to serve in par-
“liament for places within
“England and Wales, and for
“Berwick upon Tweed, and
“also for removing difficulties
“which may arise for want of**

11 Geo.
3. c. 42.
ante, 16.

14 Geo.
3. c. 15.
ante, 19.

25 Geo.
3. c. 84.
ante, 19.

10 Geo. 3. c.
16. *ante*, 6.

the presenting of petitions of complaint with respect to elections and returns, to certain per-

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Provisions of
28 Geo. 3. c. 52.

“ *returns being made of mem-*
“ *bers to serve in parliament,*
“ the provisions of the said
“ acts were extended, in the
“ manner therein mentioned,
“ to petitions complaining
“ that no return has been
“ made to a writ, issued for
“ the election of a member
“ or members to serve in par-
“ liament, within the times
“ limited in the said act, or
“ that such return is not a
“ return of a member or
“ members according to the
“ requisition of the writ: and
“ whereas it is expedient that
“ further regulations should
“ be made for the execution
“ of the said several acts, and
“ that provision should be
“ made for discouraging per-
“ sons from presenting frivo-
“ lous or vexatious petitions,
“ or setting up frivolous or
“ vexatious defences, in any
“ of the cases to which the
“ above recited acts relate,
“ and that provision should
“ also be made for the final
“ decision of questions re-
“ specting the rights of vot-
“ ing at such elections, or of
“ nominating or appointing
“ the returning officer or re-
“ turning officers who are
“ to preside thereat:” “ *Be it*
“ *therefore enacted, by the*
“ *king’s most excellent ma-*
“ *jesty, by and with the ad-*
“ *vice and consent of the*
“ *lords spiritual and tem-*

“ poral, and commons, in
“ this present parliament as-
“ sembled, and by the au-
“ thority of the same, that
“ no petition complaining of
“ an undue election or re-
“ turn, or of the omission of
“ a return, or of the insuf-
“ ficiency of a return, shall be
“ proceeded upon, in the
“ manner prescribed in the
“ said above-recited acts, un-
“ less the same shall be sub-
“ scribed by some person or
“ persons claiming therein to
“ have had a right to vote at
“ the election to which the
“ same shall relate, or to
“ have had a right to be
“ returned as duly elected
“ thereat, or alleging himself
“ or themselves to have been
“ a candidate or candidates
“ at such election: provided
“ always, that in any case
“ where a writ has been is-
“ sued for the election of a
“ member to serve in parlia-
“ ment for any district of
“ burghs in that part of
“ *Great Britain* called *Scot-*
“ *land*, any such petition as
“ aforesaid shall and may be
“ so proceeded upon, if the
“ same shall be subscribed
“ by any person or persons
“ claiming therein to have
“ had a right to vote at the
“ election of any delegate or
“ delegates, commissioner or
“ commissioners, for choosing
“ a burghess for such district.

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28 Geo. 3. c. 52.

sons whom the law considers to have a sufficient interest upon such questions; or rather it re-

§ 2. “ And be it further
 “ enacted, that if, at any
 “ time before the day ap-
 “ pointed for taking any
 “ such petition into consi-
 “ deration, the speaker of
 “ the house of commons shall
 “ be informed, by a certifi-
 “ cate in writing, subscribed
 “ by two of the members of
 “ the said house, of the death
 “ of the sitting member or
 “ sitting members, or either
 “ of them, whose election or
 “ return is complained of in
 “ such petition, or of the
 “ death of any member or
 “ members returned upon a
 “ double return, whose elec-
 “ tion or return is complained
 “ of in such petition, or that
 “ a writ of summons has been
 “ issued, under the great seal
 “ of *Great Britain*, to sum-
 “ mon any such member or
 “ members to parliament as
 “ a peer of *Great Britain*; or
 “ if the house of commons
 “ shall have resolved that the
 “ seat of any such member is
 “ by law become vacant; or
 “ if the said house shall be
 “ informed, by a declaration
 “ in writing, subscribed by
 “ such member or members,
 “ or either of them, as the
 “ case shall be, and delivered
 “ in at the table of the house,
 “ that it is not the intention
 “ of such member or mem-
 “ bers to defend his or their
 “ election or return; in every
 “ such case notice thereof
 “ shall immediately be sent
 “ by the speaker to the she-
 “ riff, or other returning offi-
 “ cer for the county, borough,
 “ or place, to which such pe-
 “ tition shall relate, and such
 “ sheriff or other returning
 “ officer shall cause a true
 “ copy of the same to be af-
 “ fixed on the doors of the
 “ county hall or town hall,
 “ or of the parish church
 “ nearest to the place where
 “ such election has usually
 “ been held, and such notice
 “ shall also be inserted, by
 “ order of the speaker, in
 “ the next *London Gazette*; (See 53
 “ and the order for taking Geo. 3.
 “ such petition into consider- c. 71. §
 “ ation shall, if necessary, be 17. *post*,
 “ adjourned, so that at the 62.)
 “ least thirty days may in-
 “ tervene between the day
 “ on which such notice shall
 “ be inserted in the said *Ga-*
 “ *zette*, and the day on which
 “ such petition shall be taken
 “ into consideration.
 “ § 3. “ And be it enacted,
 “ that it shall and may be
 “ lawful, at any time within
 “ thirty days after the day
 “ on which such notice shall
 “ have been inserted in the
 “ said *Gazette*, for any per-
 “ son or persons claiming to
 “ have had a right to vote at
 “ such election, or at the
 “ election of delegates or
 “ commissioners for making

stricts the operation of the statutes to petitions presented by such persons.—And on the other

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28 Geo. 3. c. 52.

“ such election, to petition
“ the house, praying to be
“ admitted as a party or parties, in the room of such
“ member or members, or
“ either of them; and such
“ person or persons shall
“ thereupon be so admitted
“ as a party or parties, and
“ shall be considered as such,
“ to all intents and purposes
“ whatever.

§ 4. “ And be it enacted,
“ that whenever the member
“ or members, whose election
“ or return is so complained
“ of in such petition, shall
“ have given such notice as
“ aforesaid of his or their intention not to defend the
“ same, he or they shall not
“ be admitted to appear or
“ act as a party or parties
“ against such petition, in
“ any subsequent proceedings thereupon, any thing
“ in the above recited acts to
“ the contrary notwithstanding; and he or they shall
“ also be restrained from sitting in the house, or voting
“ in any question, until such
“ petition shall have been decided upon in the manner
“ prescribed by the above recited acts and by this act.

§ 5. “ And be it further
“ enacted, that no proceeding shall be had upon any
“ petition, by virtue of the
“ above recited acts or of this
“ act, unless the person or

“ persons subscribing the
“ same, or some one or more
“ of them, shall, within fourteen days after the same
“ shall have been presented
“ to the house, or within such
“ further time as shall be limited by the house, personally enter into a recognizance to our sovereign
“ lord the king, according to
“ the form hereunto annexed,
“ in the sum of two hundred
“ pounds, with two sufficient
“ sureties, in the sum of one
“ hundred pounds each, to
“ appear before the house at
“ such time or times as shall
“ be fixed by the house for
“ taking such petition into
“ consideration, and also to
“ appear before any select
“ committee which shall be
“ appointed by the house for
“ the trial of the same, and
“ to renew the same in every
“ subsequent session of parliament, until a select committee shall have been appointed by the house for
“ the trial of the same, or
“ until the same shall have
“ been withdrawn by the permission of the house; and
“ if, at the expiration of the
“ said fourteen days, such recognizance shall not have
“ been so entered into, or
“ shall not have been received by the speaker of
“ the house of commons, the
“ speaker shall report the

(See 53 Geo. 3.
c. 71. § 3. post,
55.)

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Provisions of
28 Geo. 3. c. 52.

hand it provides for the admission of certain persons as parties, either in the event of the death

“ same to the house, and the
“ order for taking such peti-
“ tion into consideration shall
“ thereupon be discharged,
“ unless, upon matter spe-
“ cially stated, and verified
“ to the satisfaction of the
“ house, the house shall see
“ cause to enlarge the time
“ for entering into such re-
“ cognizance; and whenever
“ such time shall be so en-
“ larged, the order for taking
“ such petition into consider-
“ ation shall, if necessary, be
“ postponed, so that no such
“ petition shall be so taken
“ into consideration till after
“ such recognizance shall
“ have been entered into and
“ received by the speaker:
“ provided always, that the
“ time for entering into such
“ recognizance shall not be
“ enlarged more than once,
“ nor for any number of days
“ exceeding thirty.

§ 6. “ And be it enacted,
“ that the said recognizances
“ shall be entered into before
“ the speaker of the house of
“ commons, who is hereby
“ authorized and empowered
“ to take the same; and the
“ sufficiency of the sureties
“ named therein shall be
“ judged of and allowed by
“ the said speaker, on the
“ report of two persons ap-
“ pointed by him to examine
“ the same, of which two
“ persons the clerk, or clerk

“ assistant of the house, shall
“ always be one, and one of
“ the following officers, not
“ being a member of the said
“ house, shall be the other;
“ (that is to say) masters of
“ the high court of chancery,
“ clerks in the court of king’s
“ bench, prothonotaries in
“ the court of common pleas,
“ and clerks in the court of
“ exchequer; and the said
“ persons so appointed are
“ hereby authorized and re-
“ quired to examine the
“ same, and to report their
“ judgment thereupon; and
“ are also hereby authorized
“ to demand and receive
“ such fees, for such exa-
“ mination and report, as
“ shall be, from time to time,
“ fixed by any resolution of
“ the house of commons.

§ 7. “ Provided always, and
“ be it further enacted, that
“ in any case where the party
“ or parties, who are to enter
“ into such recognizance, or
“ his or their sureties, or
“ either of them, shall reside
“ at a greater distance from
“ *London* than forty miles, it
“ shall and may be lawful for
“ such party or parties, surety
“ or sureties, respectively, to
“ enter into such recogni-
“ zance before any of his ma-
“ jesty’s justices of the peace;
“ and his majesty’s justices
“ of the peace, or any of them,
“ is and are hereby autho-

(See 53 Geo. 3.
c. 71. § 3. *post*,
56.)

of a sitting member, or of a person returned upon a double return; or of the seat of a member

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28 Geo. 3. c. 52.

“ rized and empowered to
“ take the same; and such re-
“ cognizance, being duly cer-
“ tified under the hand of such
“ justice, and being trans-
“ mitted to the speaker of
“ the house of commons,
“ shall have the same force
“ and effect as if the same had
“ been entered into before
“ the said speaker: provided
“ also, that it shall and may
“ be lawful for the persons to
“ whom it is referred by
“ the speaker to examine the
“ sufficiency of such surety
“ or sureties, to receive as
“ evidence, in their said ex-
“ amination, any affidavits re-
“ lating thereto, which shall
“ be sworn before any mas-
“ ter of the high court of
“ chancery, or before any of
“ his majesty’s justices of the
“ peace; and such master of
“ the high court of chancery,
“ or justice of the peace, re-
“ spectively, is hereby au-
“ thorized to administer such
“ oath, and is authorized and
“ required to certify such
“ affidavit under his hand.

“ seat by death, or in any
“ other manner.

§ 9. “ And be it enacted,
“ that if the petitioner or
“ petitioners, who shall have
“ entered into such recogni-
“ zance as aforesaid, shall not
“ appear before the house by
“ himself or themselves, or
“ by his or their counsel or
“ agents, within one hour
“ after the time fixed, in pur-
“ suance of the above-recited
“ acts, and of this act, for
“ calling in the respective
“ parties, their counsel or
“ agents, for the purpose of
“ proceeding to the ap-
“ pointment of a select
“ committee; or if the se-
“ lect committee, appointed
“ in pursuance of the said
“ acts, and of this act, for
“ the trial of such petition,
“ shall inform the house that
“ such person or persons did
“ not appear before the said
“ committee, by himself or
“ themselves, or by his or
“ their counsel or agents, to
“ prosecute their said peti-
“ tion; or if such person or
“ persons shall neglect to
“ renew their said petition
“ within four sitting days
“ after the day of the com-
“ mencement of every session
“ of the same parliament, sub-
“ sequent to that in which
“ such petition was first pre-
“ sented, and until a select
“ committee shall have been

See 53
Geo. 3.
c. 71. §
post,
7.)

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returned becoming vacant, or of his declining to defend his election or return; notice of such

“ appointed for trial of the
“ same, or until the same
“ shall have been withdrawn
“ by the permission of the
“ house, in every such case
“ such person or persons shall
“ be held to have made de-
“ fault in his or their said
“ recognizance; and the
“ speaker of the house of
“ commons shall thereupon
“ certify such recognizance
“ into the court of exche-
“ quer, and shall also certify
“ that such person or per-
“ sons have made default
“ therein, and such certifi-
“ cate shall be conclusive
“ evidence of such default,
“ and the recognizance being
“ so certified shall have the
“ same effect as if the same
“ were estreated from a court
“ of law: provided always, that
“ such recognizance and cer-
“ tificate shall, in every such
“ case, be delivered by the
“ clerk or clerk assistant of
“ the house of commons, into
“ the hands of the lord chief
“ baron of the exchequer, or
“ of one of the barons of the
“ exchequer, or of such officer
“ of the court of exchequer
“ as shall be appointed by
“ the said court to receive
“ the same.

10 Geo. 3. c. 16.
§ 4. 13. 19. 20.
ante, 7. 11. 13.

§ 10. “ And whereas, by
“ several provisions contain-
“ ed in the above-recited acts
“ made in the tenth and
“ eleventh years of the reign

“ of his present majesty, *Sun-*
“ *day* and *Christmas-day* are
“ excepted from the general
“ regulations of the said acts;”
“ be it hereby enacted, that
“ in every such case, *Good*
“ *Friday* shall also be except-
“ ed therefrom, in the same
“ manner as if the same had
“ been specially excepted in
“ the said acts.

§ 11. “ And be it also
“ enacted, that if, on the day
“ immediately preceding any
“ of the three following days,
“ that is to say, *Christmas-*
“ *day*, *Whitsunday*, or *Good*
“ *Friday*, after reading the
“ order of the day for taking
“ any such petition as afore-
“ said into consideration, it
“ shall be found that there
“ are not one hundred mem-
“ bers present, or that the
“ number of forty-nine mem-
“ bers, not set aside or ex-
“ cused, cannot be com-
“ pleted, it shall and may be
“ lawful for the house, if
“ they shall think fit, any
“ thing in the above-recited
“ acts to the contrary not-
“ withstanding, to direct
“ that the said order shall be
“ adjourned for any number
“ of days, and the house
“ shall then immediately be
“ adjourned to the hour and
“ day to which such order
“ shall be so adjourned.

§ 12. “ And whereas it is
“ enacted, by the said act

facts (the manner of which is directed by that and a subsequent act) being duly published ; in or-

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Provisions of
28 Geo. 3. c. 52.

11 Geo. 3. c. 42. 4. ante, 7. " passed in the eleventh year
" of the reign of his present
" majesty, that on the day
" appointed for taking such
" petition into consideration,
" the house shall not pro-
" ceed to any other business
" whatsoever, except the
" swearing of members, pre-
" vious to the reading of the
" order of the day for that
" purpose;" " *be it hereby*
" *enacted*, that it shall and
" may be lawful for the house,
" previous to reading such
" order, to receive any re-
" port from any select com-
" mittee appointed in pur-
" suance of the above-recited
" acts, or of this act, and to
" enter the same upon their
" journals, and to give the
" necessary orders and di-
" rections thereupon; and
" that previous to reading
" the said order, the clerk of
" the crown may be admitted
" to alter or amend any re-
" turn, in pursuance of an
" order made on a preceding
" day, or on that day; and
" also, that it shall and may
" be lawful for the house,
" previous to reading the
" said order, to postpone
" the same, for the purpose
" of attending his majesty, or
" his majesty's commissioners,
" in the house of lords, in
" consequence of any mes-
" sage from his majesty, or
" from his majesty's com-

" missioners, signified to
" the house in the usual
" manner.

§ 13. " And be it also
" enacted, that if, within one
" hour after the time fixed in
" pursuance of the above-
" recited acts, and of this
" act, for calling in the re-
" spective parties, their coun-
" sel or agents, for the pur-
" pose of proceeding to the
" appointment of a select
" committee, the petitioner
" or petitioners, or some one
" or more of them, who shall
" have signed any such peti-
" tion, shall not appear by
" himself or themselves, or
" by his or their counsel or
" agents, the order for taking
" such petition into consi-
" deration shall thereupon be
" discharged, and such peti-
" tion shall not be any further
" proceeded upon in the
" manner directed in the
" above-recited acts, and in
" this act.

§ 14. " And be it enacted,
" that if, within one hour after
" the time so appointed as
" aforesaid, the sitting mem-
" ber or sitting members, or
" other party or parties op-
" posing the petition, shall not
" appear by himself or them-
" selves, or by his or their
" counsel or agents, or if, at the
" time so appointed as afore-
" said, there shall be no party
" before the house opposing

(See 32 Geo. 3.
c. 1. § 1. post,
41. 36 Geo. 3.
c. 59. § 1. post,
45.)

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28 Geo. 3. c. 52.

der that by the coming in of other persons as parties, the question as to the election or return

“ the petition, the house
“ shall proceed to appoint a
“ select committee, to try
“ the merits of such petition,
“ in the following manner;
“ (that is to say) that the
“ names of forty-nine mem-
“ bers shall be drawn, in the
“ manner prescribed in the
“ above-recited acts, but in
“ reducing the list of such
“ names to thirteen, the place
“ of a party opposing the
“ petition shall be supplied
“ by the clerk appointed to
“ attend the said committee,
“ who shall, as often as it
“ shall come to his turn, as
“ supplying the place of the
“ party opposing the petition,
“ to strike out a name, strike
“ out that name which then
“ shall be first in the said list;
“ and in every case where
“ the party opposing the peti-
“ tion would be empowered,
“ by the above-recited acts,
“ to nominate one member
“ to be added to the said
“ thirteen, the said thir-
“ teen shall, from among
“ the persons present in the
“ house at the time of drawing
“ the names of the members,
“ choose one person to supply
“ the place of the member to
“ have been so nominated,
“ in the same manner as is
“ directed by the above-re-
“ cited act made in the 11th
“ year of his majesty’s reign,
“ in the case where there are

“ more than two parties on
“ distinct interests.

§ 15. “ And be it further 11 Geo.
“ enacted, that the same 3. c. 42.
“ method of reducing the list § 6. ante,
“ of members drawn to thir- 18.
“ teen, and of nominating a
“ member to be added to the
“ thirteen remaining on the
“ said list, shall be respec-
“ tively followed, whenever
“ any party shall waive his
“ right of striking off names
“ from the said list, or of
“ nominating a member to be
“ added to the said thirteen.

§ 16. “ And be it further
“ enacted, that if any person
“ summoned to attend the
“ said select committee by
“ the warrant of the speaker
“ of the said house, or by
“ order of the said com-
“ mittee, shall disobey such
“ summons, or shall give
“ false evidence, or prevari-
“ cate, or otherwise misbe-
“ have in giving, or in refus-
“ ing to give, evidence be-
“ fore the said committee,
“ the said committee shall
“ have power, by a warrant
“ to be signed by the chair-
“ man, and directed to the
“ serjeant at arms attending
“ the house of commons, or
“ to his deputy or deputies,
“ to commit such person (not
“ being a peer of the realm
“ or a lord of parliament) to
“ the custody of the said
“ serjeant, without bail or

11 Geo. 3. c.
42. § 6. ante, 17.

may be tried, notwithstanding that the person returned ceases to have an interest therein, as it

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28 Geo. 3. c. 52.

“mainprize, for any time
“not exceeding twenty-four
“hours if the house shall
“then be sitting, or if not,
“then for a time not exceed-
“ing twenty-four hours after
“the hour to which the house
“shall then be adjourned.

10 Geo. 3. c. 16. § 23.
ante, 14.

§ 17. “And whereas it is
“enacted by the said act
“made in the tenth year of
“his majesty’s reign, that if
“more than two members of
“the said select committee
“shall, on any account, be
“absent therefrom, the said
“select committee shall ad-
“journ in the manner in the
“said act directed, and so
“from time to time, until
“thirteen members are as-
“sembled; and that no such
“determination as in the
“said act is mentioned shall
“be made, nor any question
“be proposed, unless thirteen
“members shall be present;
“and that no member shall
“have a vote on such de-
“termination, or any other
“question or resolution, who
“has not attended during
“every sitting of the said
“select committee; and that,
“in case the number of
“members able to attend the
“said committee shall, by
“death or otherwise, be un-
“avoidably reduced to less
“than thirteen, and shall so
“continue for the space of
“three sitting days, the said

10 Geo. 3. c. 16. § 28.
ante, 15.

10 Geo. 3. c. 16. § 24.
ante, 14.

“committee shall be dis-
“solved, and another chosen
“to try and determine the
“matter of such petition, in
“the manner in the said act
“before provided;” “*be it*
“*hereby enacted*, that when-
“ever any committee shall
“have sat for business four-
“teen days, not including
“those days on which they
“shall have adjourned on
“account of the absence
“of any member, nor in-
“cluding *Sunday, Christmas-*
“*day, or Good Friday*, it
“shall and may be lawful
“for them to proceed to bu-
“siness, if a number of mem-
“bers not less than twelve
“be present; and in such
“case, the committee shall
“not be dissolved by rea-
“son of the absence of
“the members, unless the
“number of members able to
“attend the same shall, by
“death or otherwise, be un-
“avoidably reduced to less
“than twelve, and shall so
“continue for the space of
“three sitting days; and
“whenever any committee
“shall in like manner have
“sat for business twenty-five
“days, it shall and may be
“lawful for them to proceed
“to business, if a number of
“members not less than
“eleven be present; and in
“such case, the committee
“shall not be dissolved by

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Provisions of
28 Geo. 3. c. 52.

does not follow, that a seat which the person highest upon the poll may decline to claim

“ reason of the absence of
“ the members, unless the
“ number of members able
“ to attend the same shall,
“ by death or otherwise, be
“ unavoidably reduced to less
“ than eleven, and shall so
“ continue for the space of
“ three sitting days.

§ 18. “ And be it further
“ enacted, that every such
“ committee, at the same
“ time that they report to the
“ house their final determi-
“ nation on the merits of the
“ petition which they were
“ sworn to try, shall also re-
“ port to the house whether
“ such petition did, or did
“ not, appear to them to be
“ frivolous or vexatious; and
“ that they shall in like man-
“ ner report, with respect to
“ every party or parties who
“ shall have appeared before
“ them in opposition to such
“ petition, whether the op-
“ position of such party or
“ parties respectively did, or
“ did not, appear to them to
“ be frivolous or vexatious;
“ and that if no party shall
“ have appeared before them
“ in opposition to such pe-
“ tition, they shall then re-
“ port to the house whether
“ such election or return, or
“ such alleged omission of a
“ return, or such alleged in-
“ sufficiency of a return, as
“ shall be complained of in
“ such petition, according

“ as the case shall be, did,
“ or did not, appear to
“ them to be vexatious or
“ corrupt.

§ 19. “ And be it enacted,
“ that whenever any such
“ committee shall report to
“ the house, with respect to
“ any such petition, that the
“ same appeared to them to
“ be frivolous or vexatious,
“ the party or parties, if any,
“ who shall have appeared
“ before the committee in
“ opposition to such petition,
“ shall be entitled to recover,
“ from the person or persons,
“ or any of them, who shall
“ have signed such petition,
“ the full costs and expences
“ which such party or parties
“ shall have incurred in op-
“ posing the same; such costs
“ and expences to be ascer-
“ tained in the manner here-
“ inafter directed.

§ 20. “ And be it also
“ enacted, that whenever any
“ such committee shall report
“ to the house, with respect
“ to the opposition made to
“ such petition, by any party
“ or parties who shall have
“ appeared before them, that
“ such opposition appeared
“ to them to be frivolous or
“ vexatious, the person or
“ persons who shall have
“ signed such petition shall
“ be entitled to recover from
“ such party or parties, or
“ any of them, with respect

See 53
Geo. 3.
c. 71. §
2. post,
54.

ought necessarily to belong to the next in point of numbers, or, that the electors would be con-

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Provisions of
23 Geo. 3. c. 52.

“ to whom such report shall
“ be made, the full costs and
“ expences which such peti-
“ tioner or petitioners shall
“ respectively have incurred
“ in prosecuting their said
“ petition; such costs and
“ expences to be ascertained
“ in the manner hereinafter
“ directed.

§ 21. “ And be it also
“ enacted, that whenever, in
“ any case where no party
“ shall have appeared before
“ such committee in opposi-
“ tion to such petition, such
“ committee shall report to
“ the house, with respect to
“ the election or return, or to
“ the alleged omission of a
“ return, or to the alleged
“ insufficiency of a return,
“ complained of in any such
“ petition, that the same ap-
“ peared to them to be vexa-
“ tious or corrupt, the person
“ or persons who shall have
“ signed such petition shall
“ be entitled to recover
“ from the sitting member or
“ sitting members (if any)
“ whose election or return
“ shall be complained of in
“ such petition, such sitting
“ member or sitting members
“ not having given notice as
“ aforesaid of his or their in-
“ tention not to defend the
“ same, or from any other
“ person or persons whom
“ the house shall have ad-
“ mitted or directed to be

“ made a party or parties to
“ oppose such petition, the
“ full costs and expences
“ which such petitioner or
“ petitioners shall have in-
“ curred in prosecuting their
“ said petition; such costs
“ and expences to be ascer-
“ tained in the manner here-
“ inafter directed.

§ 22. “ And be it enacted,
“ that in the several cases
“ herein before mentioned,
“ the costs and expences of
“ prosecuting or opposing
“ any such petition shall be
“ ascertained in manner fol-
“ lowing; (that is to say),
“ that on application made to
“ the speaker of the house of
“ commons, by any such pe-
“ titioner or petitioners, or
“ party or parties, as before
“ mentioned, for ascertaining
“ such costs and expences, he
“ shall direct the same to be
“ taxed by two persons, of
“ whom the clerk or clerk as-
“ sistant of the house shall al-
“ ways be one, and one of the
“ following officers, not being
“ a member of the house,
“ shall be the other; (that is
“ to say), masters in the high
“ court of chancery, clerks
“ in the court of king’s bench,
“ prothonotaries in the court
“ of common pleas, and
“ clerks in the court of ex-
“ chequer; and the persons
“ so authorized and directed
“ to tax such costs and ex-

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tent to be represented by him. And in the case of a member declaring his intention to

“ pences shall, and they are
“ hereby required to examine
“ the same, and to report the
“ amount thereof to the
“ speaker of the said house;
“ who shall, on application
“ made to him, deliver to
“ the party or parties a cer-
“ tificate, signed by himself,
“ expressing the amount of
“ the costs and expences
“ allowed in such report;
“ and the persons so ap-
“ pointed to tax such costs,
“ and report the amount
“ thereof, are hereby autho-
“ rized to demand and re-
“ ceive, for such taxation and
“ report, such fees as shall
“ be, from time to time,
“ fixed by any resolution of
“ the house.

§ 23. “ And be it enacted,
“ that it shall and may be
“ lawful for the party or par-
“ ties entitled to such costs
“ and expences, or for his,
“ her, or their executors or
“ administrators, to demand
“ the whole amount thereof,
“ so certified as above, from
“ any one or more of the
“ persons respectively, who
“ are hereinbefore made
“ liable to the payment
“ thereof, in the several cases
“ hereinbefore mentioned;
“ and in case of non-payment
“ thereof, to recover the
“ same by action of debt, in
“ any of his majesty’s courts
“ of record at *Westminster*;

“ in which action it shall be
“ sufficient for the plaintiff or
“ plaintiffs to declare that the
“ defendant or defendants is
“ or are indebted to him or
“ them (in the sum to which
“ the costs and expences,
“ ascertained in manner
“ aforesaid, shall amount) by
“ virtue of this act; and the
“ certificate of the speaker
“ of the house of commons,
“ under his signature, of the
“ amount of such costs and
“ expences, together with an
“ examined copy of the en-
“ tries in the journals of the
“ house of commons, of the
“ resolution or resolutions of
“ the said select committee
“ or committees, shall be
“ deemed full and sufficient
“ evidence in support of such
“ action of debt: Provided
“ always, that in every such
“ action of debt, no wager
“ of law, or more than one
“ imparlance, shall be al-
“ lowed; and the party or
“ parties in whose favour
“ judgment shall be given in
“ any such action, shall re-
“ cover his or their costs.

§ 24. “ And be it further
“ enacted, that in every case
“ where the amount of such
“ costs and expences shall
“ have been so recovered
“ from any person or persons,
“ it shall and may be lawful
“ for such person or persons
“ to recover in like manner

abandon his claim to the seat, he is thereby forbidden afterwards to appear as a party against

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“ from the other persons, or
“ any of them, if such there
“ shall be, who shall be liable
“ to the payment of the said
“ costs and expences, a pro-
“ portionable share thereof,
“ according to the number
“ of persons so liable.

§ 25. “ And be it further
“ enacted, that whenever any
“ such select committee, ap-
“ pointed to try the merits
“ of any such petition as
“ aforesaid, shall be of opi-
“ nion that the merits of
“ such petition do wholly or
“ in part depend on any
“ question or questions which
“ shall be before them re-
“ specting the right of elec-
“ tion for the county, city,
“ borough, district of burghs,
“ or other place to which
“ such petition shall relate,
“ or respecting the right of
“ choosing, nominating, or
“ appointing the returning
“ officer or returning officers,
“ who is or are to make return
“ of such election, the said
“ committee, in such case,
“ shall require the counsel or
“ agents for the several par-
“ ties, or if there shall be none
“ such before them, shall then
“ require the parties them-
“ selves, to deliver to the
“ clerk of the said committee,
“ statements in writing of
“ the right of election, or of
“ choosing, nominating, or
“ appointing, returning of-

“ ficers, for which they re-
“ spectively contend; and
“ the committee shall come
“ to distinct resolutions on
“ such statements, and shall,
“ at the same time that they
“ report to the house their
“ final determination on the
“ merits of such petition,
“ also report to the house
“ such statement or state-
“ ments, together with their
“ judgment with respect
“ thereto: And such report
“ shall thereupon be entered
“ in the journals of the house,
“ and notice thereof shall be
“ sent by the speaker to the
“ sheriff, or other returning
“ officer, of the place to which
“ the same relate; and a
“ true copy of such notice
“ shall, by such sheriff, or
“ other returning officer, be
“ forthwith affixed to the
“ doors of the county hall or
“ town hall, or of the parish
“ church nearest to the place
“ where such election has
“ usually been held; and
“ such notice shall also be
“ inserted by order of the
“ speaker, in the next *Lon-
“ don Gazette*.

(See 53 Geo. 3.
c. 71. § 17. post,
62.)

§ 26. “ And be it enacted,
“ that it shall and may be
“ lawful for any person or
“ persons, at any time within
“ twelve calendar months
“ after the day on which such
“ report shall have been made
“ to the house, or within

(See 53 Geo. 3.
c. 71. § 15. post,
60.)

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28 Geo. 3. c. 52.

the petition, or to sit or vote in the house until such petition shall have been decided. This act

“ fourteen days after the day
“ of the commencement of
“ the next session of parlia-
“ ment after that in which
“ such report shall have been
“ made to the house, to pe-
“ tition the house to be ad-
“ mitted as a party or parties
“ to oppose that right of
“ election, or of choosing,
“ nominating, or appoint-
“ ing, the returning of-
“ ficer or returning officers,
“ who is or are to make
“ return of such election,
“ which shall have been
“ deemed valid in the judg-
“ ment of such committee.

§ 27. “ And be it enacted,
“ that if no such petition shall
“ be so presented within the
“ time above limited for pre-
“ senting the same, the said
“ judgment of such com-
“ mittee, on such question
“ or questions, shall be held
“ and taken to be final and
“ conclusive in all subsequent
“ elections of members of
“ parliament for that place to
“ which the same shall re-
“ late, and to all intents and
“ purposes whatsoever; any
“ usage to the contrary not-
“ withstanding.

§ 28. “ And be it enacted,
“ that whenever any such
“ petition shall be so pre-
“ sented, a day and hour shall
“ be appointed by the house
“ for taking the same into
“ consideration, so that the

“ space of forty days at the
“ least shall always intervene
“ between the day of pre-
“ senting such petition and
“ the day appointed by the
“ house for taking the same
“ into consideration; and
“ notice of such day and
“ hour shall be inserted, by
“ order of the speaker, in
“ the next *London Gazette*,
“ and shall also be sent by
“ him to the sheriff, or other
“ returning officer, for the
“ place to which such peti-
“ tion shall relate; and a true
“ copy of such notice shall,
“ by the said sheriff, or other
“ returning officer, be forth-
“ with affixed to the doors
“ of the county hall, or town
“ hall, or of the parish church
“ nearest to the place where
“ such election has usually
“ been held.

§ 29. “ And be it enacted,
“ that it shall and may be
“ lawful for any person or
“ persons, at any time before
“ the day so appointed for
“ taking such petition into
“ consideration, to petition
“ the house to be admitted
“ as a party or parties to de-
“ fend such right of election,
“ or of choosing, nominating,
“ or appointing, the return-
“ ing officer or returning
“ officers; and such person or
“ persons shall thereupon be
“ so admitted, and shall be
“ considered as such to all

(See 34
Geo. 3.
c. 83.
§ 1. post,
43 .)

(See 53.
Geo. 3.
c. 71. §
17. post,
62.)

also requires recognizances to be entered into on the part of petitioners in most cases (an al-

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“ intents and purposes what-
“ ever.

§ 30. “ And be it enacted,
“ that at the hour appointed
“ by the house for taking
“ such petition into consi-
“ deration, the house shall
“ proceed to appoint a select
“ committee to try the merits
“ thereof, according to the
“ directions of the above re-
“ cited acts, and of this act;
“ and such select committee
“ shall be sworn to try and
“ determine the merits of
“ such petition, so far as the
“ same relate to any ques-
“ tion or questions respecting
“ the right of election for the
“ place to which the petition
“ shall relate, or respecting
“ the right of appointing, no-
“ minating, or choosing, the
“ returning officer or return-
“ ing officers who are to make
“ return of such election; and
“ the determination of such
“ committee on such ques-
“ tion or questions shall be
“ entered on the journals of
“ the house, and shall be
“ held and taken to be final
“ and conclusive in all sub-
“ sequent elections of mem-
“ bers of parliament for that
“ place to which the same
“ shall relate, and to all in-
“ tents and purposes what-
“ ever; any usage to the
“ contrary notwithstanding.

§ 31. “ And whereas it is
“ amongst other things en-

“ acted, by an act passed in
“ the second year of the
“ reign of his late majesty
“ king George the second, in-
“ titled, *An act for the more*
“ *effectual preventing bribery*
“ *and corruption in the elec-*
“ *tions of members to serve in*
“ *parliament*, that such votes
“ shall be deemed to be
“ legal which have been
“ so declared by the last
“ determination in the house
“ of commons; which last
“ determination concerning
“ any county, shire, city,
“ borough, cinque port, or
“ place, shall be final to all
“ intents and purposes what-
“ ever, any usage to the con-
“ trary notwithstanding;” “ *be*
“ *it enacted*, that so much of
“ the said act as is above re-
“ cited shall be, and the
“ same is hereby repealed,
“ in so far only as the same
“ relates, or might be con-
“ strued to relate, to any
“ such determination to be
“ made in the house of com-
“ mons subsequent to the
“ passing of this act.

§ 32. “ And be it enacted,
“ that all and every the rules,
“ regulations, authorities, and
“ powers, prescribed or given
“ by the above recited acts,
“ or by this act, to select
“ committees for the trial of
“ controverted elections or
“ returns, shall be in full
“ force and effect with re-

2 Geo. 3. c. 24.
§ 4. App. xiii.
xv.

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28 Geo. 3. c. 52.

teration in the amount of which has been since made), thereby enforcing the appearance of peti-

“ spect to select committees
“ appointed by virtue of this
“ act, for the trial of such
“ question or questions of
“ right as aforesaid, in as full
“ and ample a manner as if the
“ same were herein repeated,
“ and particularly and epeci-
“ ally enacted, concerning
“ such select committees:
“ Provided always, that the
“ several rules and regula-
“ tions hereinbefore enacted,
“ by which certain persons
“ are directed to enter into
“ recognizances, and by
“ which certain persons are
“ made liable to the pay-
“ ment of costs, in the parti-
“ cular manner, and in the
“ several cases hereinbefore
“ specified, shall not be
“ construed to apply to the
“ case of any petition pre-
“ sented in pursuance of this
“ act, and relating solely to
“ any question or questions
“ respecting the right of
“ election, or of choosing,
“ nominating, or appointing,
“ a returning officer or re-
“ turning officers.

§ 33. “ And be it further
“ enacted, that whenever it
“ shall happen that parlia-
“ ment shall be prorogued
“ while any select committee
“ shall be sitting for the trial
“ of any such petition as
“ aforesaid, and before they
“ shall have reported to the
“ house their determination

“ thereon, such committee
“ shall not be dissolved by
“ such prorogation, but shall
“ be thereby adjourned to
“ twelve of the clock on the
“ day immediately following
“ that on which parliament
“ shall meet again for the
“ dispatch of business (*Sun-
“ days, Good Friday, and
“ Christmas-day, always ex-
“ cepted*), and all former pro-
“ ceedings of the said com-
“ mittee shall remain and
“ continue to be of the same
“ force and effect as if par-
“ liament had not been so
“ prorogued; and such com-
“ mittee shall meet on the
“ day and hour to which it
“ shall be so adjourned, and
“ shall thenceforward con-
“ tinue to sit from day to day,
“ in the manner provided in
“ the above-recited acts, and
“ in this act, until they shall
“ have reported to the house
“ their determination on the
“ merits of such petition.”

*Form of the Recognizance re-
ferred to in this Act.*

“ BE it remembered, that on
“ the day of
“ in the year of our Lord
“ before me
“ A. B. [*speaker of the house
“ of commons*] or [*one of his
“ majesty's justices of the peace
“ for the county of*]
“ came C. D. E. F. and J. G.
“ and severally acknowledged

tioners in order to the trial of their petition. It forbids also the withdrawing petitions (though under some circumstances this may now be done.) It provides likewise for the case of the non-appearance of petitioners. It makes some further regulations, as to the appointment of select committees, and as to the business of the house at such times; it directs the discharge of petitions upon the petitioners not appearing within a given time; and that notwithstanding the non-appearance of the sitting member or other person opposing a petition, a select committee shall nevertheless be appointed in the manner therein prescribed, in order that the case may still be inquired into. It further directs the punishment of witnesses not attending, or

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“ *themselves to owe to our sove-*
 “ *reign lord the king the follow-*
 “ *ing sums; that is to say, the*
 “ *said C. D. the sum of two*
 “ *hundred pounds, and the said*
 “ *E. F. and the said J. G. the*
 “ *sum of one hundred pounds*
 “ *each, to be levied on their re-*
 “ *spective goods and chattels,*
 “ *lands, and tenements, to the*
 “ *use of our said sovereign lord*
 “ *the king, his heirs and succes-*
 “ *sors, in case the said C. D.*
 “ *shall fail in performing the*
 “ *condition hereunto annexed.*

“ *THE CONDITION of*
 “ *this recognizance is, that*
 “ *if the said C. D. shall duly*
 “ *appear before the house of*

“ *commons, at such time or*
 “ *times as shall be fixed by*
 “ *the said house for taking*
 “ *into consideration the pe-*
 “ *tition signed by the said*
 “ *C. D. complaining of an*
 “ *undue election or return*
 “ *for the of*

“ [Here specify the
 “ county, city, borough,
 “ or district of burghs] or,
 “ complaining that no return
 “ has been made for the said
 “ [] of []
 “ within the time limited by
 “ act of parliament, or that
 “ the return made for the
 “ said [] of []
 “ [] is not a return of a
 “ member or members ac-

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giving false evidence, or prevaricating before select committees, and enables committees in certain cases to proceed with reduced numbers. This act also introduced, for the first time, some very material and salutary regulations, the effects of which were to discourage petitions or opposition to petitions, where the grounds for such petition or opposition were frivolous or vexatious, by fixing upon the parties so petitioning, or so opposing, the payment of the costs incurred by such petition or opposition. Another very important class of regulations, which are tending by degrees to ascertain and fix the law, upon such points, are embraced in the same act, namely, those regarding cases where petitions depend upon questions as to rights of election, or of the appointment of returning officers, select committees being therein directed to report specifically upon the same, in order that their judgment (certain prescribed steps being taken thereupon), unless questioned by petition, within a given time, which has been since altered (the proceed-

*“ cording to the requisition
“ of the writ, and shall ap-
“ pear before any select com-
“ mittee which shall be ap-
“ pointed by the house of
“ commons for the trial of
“ the same, and shall renew
“ his said petition in every
“ subsequent session of this
“ present parliament, until a*

*“ select committee shall have
“ been appointed by the said
“ house for the trial of the
“ same, or until the same
“ shall have been withdrawn
“ by the permission of the
“ said house; then this re-
“ cognizance to be void,
“ otherwise to be of full
“ force and effect.”*

ings upon such petition being therein pointed out), may be final and conclusive at all subsequent elections.

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Provisions of
28 Geo. 3. c. 52.
and 32 Geo. 3.
c. 1.

The statutes of the 11 Geo. 3. c. 42. (§ 4.) and 28 Geo. 3. c. 52. (§ 12.) had very much restricted the business to be gone into by the house, on days appointed for the consideration of election petitions, previous to the reading the order of the day for that purpose; but it being found to be of importance, that that restriction should be somewhat relaxed, the stat. 32 Geo. 3. c. 1. (a) removes it in some enumerated cases.

(a) The stat. 32 Geo. 3. c. 1.—“*An Act to extend the Provisions of certain Acts of Parliament made to regulate the Trials of controverted Elections, or Returns of Members to serve in Parliament.*”—[A. D. 1792.]

“Whereas, by an act passed in the eleventh year of the reign of his present majesty, intituled, *An act to explain and amend an act, made in the last session of parliament, intituled, An act to regulate the trials of controverted elections or returns of members to serve in parliament*, it is enacted, that on the day appointed by the house of commons for taking into consideration any petition complaining of an undue election, or return

“of any member to serve in parliament, the house shall not proceed to any other business whatsoever, except the swearing of members, previous to the reading of the order of the day for that purpose: And whereas, by an act passed in the twenty-eighth year of the reign of his present majesty, intituled, *An act for the further regulation of the trials of controverted elections, or returns of members to serve in parliament*, it is enacted, that it shall and may be lawful for the house, previous to the reading such order, to proceed to such other business as in the said act is particularly specified: And whereas it is of importance, that the like power should be ex-

28 Geo. 3. c. 52. § 12. ante, 29.

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Provisions of
34 Geo. 3. c. 83.

The stat. 34 Geo. 3. c. 83. (a) next followed, which was merely to explain certain provisions

“ tended to the several cases
“ hereinafter mentioned :”
“ *Be it enacted*, by the king’s
“ most excellent majesty, by
“ and with the advice and
“ consent of the lords spi-
“ ritual and temporal, and
“ commons, in this present
“ parliament assembled, and
“ by the authority of the
“ same, that on the day ap-
“ pointed by the house for
“ taking into consideration
“ any petition complaining
“ of an undue election, or
“ return of any member to
“ serve in parliament, or the
“ petition of any person or
“ persons desiring to oppose
“ any right of election, or
“ the right of choosing, no-
“ minating, or appointing,
“ any returning officer, or
“ returning officers, which
“ shall have been deemed
“ valid by the determination
“ of any select committee, it
“ shall and may be lawful for
“ the house, previous to the
“ reading the order or orders
“ for taking any such petition
“ or petitions into considera-
“ tion, to receive any mes-
“ sage or messages from the
“ lords; and also that it
“ shall and may be lawful
“ for the house, on the days
“ appointed for the trial of
“ any articles of impeach-
“ ment, exhibited or to be
“ exhibited by the commons,
“ before the lords in par-

liament, previous to the (See 36
“ reading any such order or Geo. 3.
“ orders as aforesaid, to pro- c. 59.
“ ceed to any business that § 1. post,
“ may be necessary for the 45.)
“ purpose of carrying on the
“ prosecution of such im-
“ peachment.”

(a) The stat. 34 Geo. 3.
c. 83.—“ *An Act to explain*
“ *so much of an Act, made in*
“ *the twenty-eighth Year of*
“ *his present Majesty’s Reign,*
“ *intituled, An Act for the*
“ *further Regulation of the*
“ *Trials of controverted Elec-*
“ *tions, or Returns of Members*
“ *to serve in Parliament, as re-*
“ *lates to the Time of present-*
“ *ing certain renewed Peti-*
“ *tions, and taking the same*
“ *into Consideration.*”

[A. D. 1794.]

“ Whereas, by an act pass- 28 Geo.
“ ed in the twenty-eighth 3. c. 52.
“ year of his present ma- § 26. 28.
“ jesty’s reign, intituled, *An ante, 35,*
“ *act for the further regulation 36.*
“ *of the trials of controverted*
“ *elections, or returns of*
“ *members to serve in parlia-*
“ *ment, it is enacted, that*
“ whenever any such select
“ committee of the house of
“ commons, as is therein
“ mentioned, shall have re-
“ ported to the house their
“ judgment respecting the
“ right of election of mem-
“ bers to serve in parlia-
“ ment, for any county, city,
“ borough, or place, or of

of the stat. 28 Geo. 3. c. 52. (§ 26 and 28.) with respect to certain renewed petitions, and to re-

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Provisions of
34 Geo. 3. c. 83.

“ choosing, nominating, or
“ appointing, the returning
“ officers, who is or are to
“ make return of such elec-
“ tion, it shall be lawful for any
“ person or persons, at any
“ time within twelve calendar
“ months after the day on
“ which such report shall
“ have been made to the
“ house, or within fourteen
“ days after the day of the
“ commencement of the next
“ session of parliament, after
“ that in which such report
“ shall have been made to
“ the house, to petition the
“ house to be admitted as
“ parties to oppose the right
“ which has been deemed
“ valid in the judgment of
“ such committee; and that
“ when such petition shall be
“ so presented, a day shall
“ be appointed by the house
“ for taking the same into
“ consideration, so that the
“ space of forty days at the
“ least shall always intervene
“ between the day of pre-
“ senting such petition, and
“ the day appointed by the
“ house for taking the same
“ into consideration: And
“ whereas the said provision,
“ which directs that the said
“ space of forty days shall
“ intervene between the day
“ of presenting such petition,
“ and the day appointed by
“ the house for taking the
“ same into consideration,

“ hath been construed to ex-
“ tend to petitions which are
“ renewed in any session or
“ sessions of parliament, sub-
“ sequent to that in which
“ such petition was originally
“ presented to the house,
“ which proceeding hath been
“ found to be inconvenient;”
“ *For remedy thereof*, be it
“ enacted, by the king’s
“ most excellent majesty,
“ by and with the advice
“ and consent of the lords
“ spiritual and temporal, and
“ commons, in this present
“ parliament assembled, and
“ by the authority of the
“ same, that every petition,
“ so renewed as aforesaid,
“ shall be presented to the
“ house within fourteen days
“ after the day of the com-
“ mencement of any such sub-
“ sequent session or sessions
“ of parliament, and not other-
“ wise; and that whenever any
“ such renewed petition shall
“ be so presented, a day and
“ hour, at not less than four-
“ teen days distance, shall be
“ appointed by the house,
“ for taking the same into
“ consideration, any thing in
“ the said act to the contrary
“ hereof notwithstanding.

§ 2. “ And be it further
“ enacted, that if any such
“ petition shall not, from
“ time to time, and in every
“ session of parliament, until
“ the same shall be taken

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gulate the time of presenting and of taking the same into consideration.

Provisions of
36 Geo. 3. c. 59.

Some inconveniences had been experienced from the delay in the appointment of select committees by reason of the provisions of the statutes 10 Geo. 3. c. 16. (§ 4.) and 11 Geo. 3. c. 42. (§ 3.) (which were also adopted by the 25 Geo. 3. c. 84. § 11. and the 28 Geo. 3. c. 52. § 32.); in order to remedy which the stat. 36 Geo. 3. c. 59. (a) made some alterations and additional

“into consideration, be so
“renewed within the time
“above limited for renewing
“the same, the judgment of
“such committee on such
“question or questions shall
“be held and taken to be
“final and conclusive in all
“subsequent elections of
“members of parliament for
“that place to which the
“same shall relate, and to all
“intents and purposes what-
“soever.”

(a) The stat. 36 Geo. 3. c. 59.—“*An Act for the more effectual Execution of several Acts of Parliament, made for the Trials of controverted Elections, or Returns of Members to serve in Parliament.*”—[A. D. 1796.]

10 Geo. 3. c.
16. § 4. ante, 7.

“Whereas, by an act passed in the tenth year of the reign of his present majesty, intituled, *An act to regulate the trials of controverted elections, or returns of members to serve in parlia-*

ment, it is enacted, that at the time appointed for taking any petition, complaining of an undue election or return of a member or members to serve in parliament, into consideration, and previous to the reading the order of the day for that purpose, the house shall be counted, and that if there be less than one hundred members present, the order for taking such petition into consideration shall be immediately adjourned to a particular hour on the following day, as therein mentioned, and the house shall then adjourn to the said day; and that on the said following day, the house shall proceed in the same manner; and so from day to day, till there be an attendance of one hundred members at the reading the order of the day to take such petition into con-

regulations, the object of which was to enforce the attendance of members, and to ensure the

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Provisions of
36 Geo. 3. c. 59.

11 Geo. 3. c. 42. § 3. ante, 16. sideration: And whereas, “ by an act passed in the “ eleventh year of the reign “ of his present majesty, “ for explaining and amend- “ ing the said act, it is en- “ acted, that if at the time “ of drawing by lot the “ names of the members, in “ manner prescribed by the “ said former act, the num- “ ber of forty-nine members “ not set aside nor excused “ cannot be completed, the “ house shall proceed in the “ manner they are directed “ by the said former act “ to proceed, in case there “ be less than one hundred “ members present at the “ time therein prescribed for “ counting the house, and so “ from day to day, as often “ as the case shall happen:

25 Geo. 3. c. 84. § 10 and 11. ante, 20. “ And whereas, by an act “ passed in the twenty-fifth “ year of the reign of his “ present majesty, intituled, “ *An act to limit the duration “ of polls and scrutinies, and “ for making other regulations “ touching the election of mem- “ bers to serve in parliament, “ for places within England “ and Wales, and for Berwick- “ upon-Tweed, and also for “ removing difficulties which “ may arise for want of returns “ being made of members to “ serve in parliament; and by “ one other act, made in the “ twenty-eighth year of the*

28 Geo. 3. c. 52. § 26 to § 32. ante, 35.

“ reign of his present ma-
“ jesty, intituled, *An act for “ the further regulation of the “ trials of controverted elec- “ tions, or returns of members “ to serve in parliament, it “ is enacted, that petitions “ complaining of the omis- “ sion, or of the insufficiency “ of a return to any writ “ issued for the election of “ any member or members to “ serve in parliament, and “ also the petitions of any “ person or persons desiring “ to oppose any right of “ election, or the right of “ choosing, nominating, or “ appointing, any returning “ officer or returning of- “ ficers, which shall have “ been deemed valid by the “ determination of any select “ committee, shall be taken “ into consideration, tried, “ and determined, in the “ same manner as petitions “ complaining of undue elec- “ tions and returns are di- “ rected to be taken into “ consideration, tried, and “ determined, by the said “ acts passed in the tenth “ and eleventh years of the “ reign of his present ma- “ jesty: And whereas it is “ expedient that further pro- “ vision should be made for “ the preventing delay in the “ appointment of any such “ select committee, to be “ appointed for the purposes*

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Provisions of
36 Geo. 3. c. 59.

proceeding to the consideration of election petitions at the appointed times, by forbidding

“aforesaid, any or either of
“them,” “*Be it enacted*, by
“the king’s most excellent
“majesty, by and with the
“advice and consent of the
“lords spiritual and tempo-
“ral, and commons, in this
“present parliament assem-
“bled, and by the autho-
“rity of the same, that if,
“after counting of the house
“in the manner before men-
“tioned, there be less than
“one hundred members pre-
“sent, or if the forty-nine
“members not set aside or
“excused cannot be com-
“pleted, it shall and may be
“lawful for the house (after
“the order or orders for
“taking any such petition or
“petitions into consideration
“shall have been adjourned
“to a particular hour, on
“the following or such other
“day as in the said acts is
“directed), to proceed (in
“like manner as they might
“have proceeded if there
“had been no order or or-
“ders for taking any such
“petition or petitions into
“consideration on that day)
“upon any order of the day
“for the call of the house,
“which shall have been pre-
“viously fixed for that day,
“and to direct that the
“house, in pursuance of such
“order, be then called over,
“if they shall so think fit, or
“to direct that such order of

“the day for a call of the
“house shall be adjourned
“to such future day as they
“shall appoint, and in either
“of such cases to come to
“such resolutions, and to
“make such orders relating
“thereto, as are usually at
“any time made in such
“cases, or as to them shall
“seem meet; and in case no
“order of the day for a call
“of the house shall have
“been previously fixed for
“that day, then it shall and
“may be lawful for the house
“to order that the house
“shall be called over on such
“future day as they shall
“appoint, and to make such
“orders relating thereto as
“they shall think necessary,
“and in any case to make
“such other orders as to
“them shall seem expedient
“for enforcing the attend-
“ance of the members on
“the business of the house;
“and that the house shall
“then adjourn to the same
“day to which such order
“or orders shall have been
“adjourned, and so from
“time to time, as occasion
“shall require; and in case
“no such proceedings with
“respect to any call of the
“house, or other the mat-
“ters before mentioned shall
“take place, or if, in the
“course of those proceed-
“ings, the house shall be ad-

the entering upon other business by the house, unless in some very few excepted cases.

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The stat. 42 Geo. 3. c. 84. (a) was passed principally for the purpose of pointing out the

Provisions of
42 Geo. 3. c. 84.

“journed for want of mem-
“bers, the house shall be
“deemed and taken, and
“shall be declared to be ad-
“journed to the same day to
“which such order or orders
“shall have been adjourned:
“provided always, that in case
“the forty-nine members,
“not set aside nor excused,
“cannot be completed, it
“shall not be lawful for the
“house to proceed upon any
“of the matters before men-
“tioned, until the door of
“the house is unlocked, and
“the parties, their counsel
“and agents, are withdrawn
“from the bar.

§ 2. “Provided always, and
“be it enacted, that the
“house shall not, on any day
“when any such petition or
“petitions shall be ordered
“to be taken into consider-
“ation, proceed to any other
“business (other than such
“as may, by virtue of any
“act of parliament, be pro-
“ceeded on previous to the
“reading of the order of the
“day for taking any such
“petition or petitions into
“consideration) until there
“be an attendance of one
“hundred members, or until
“the number of forty-nine
“members, not set aside nor

“excused, shall be com-
“pleted, other than and ex-
“cept to the calling over of
“the house, adjourning such
“call, or ordering a call of
“the house on a future day,
“and making such orders
“relative thereto as they
“shall think fit, or such other
“orders as to them shall
“seem expedient for enforc-
“ing the attendance of the
“members on the business of
“the house, in the manner
“before mentioned.”

(a) The stat. 42 Geo. 3. c.
84.—“*An Act for the further
“Regulation of the Trials of
“controverted Elections, or
“Returns of Members to serve
“in Parliament; and for ex-
“pediting the Proceedings re-
“lating thereto.*”—

[A. D. 1802.]

“Whereas, by an act of
“parliament, passed in the
“tenth year of the reign of
“his present majesty, in-
“tituled, *An act to regulate
“the trials of controverted
“elections, or returns of mem-
“bers to serve in parliament,*
“certain regulations were
“established, for a time
“therein limited, for the
“trials of controverted elec-
“tions, or returns of mem-
“bers to serve in parliament:

10 Geo. 3. c.
16. ante, 6.

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Provisions of
42 Geo. 3. c. 84.

11 Geo. 3. c.
42. ante, 16.

14 Geo. 3. c.
15. ante, 19.

25 Geo. 3. c.
84. ante, 19.

course of proceeding, where two or more petitions are to be taken into consideration on the

“ and whereas, by an act
“ passed in the eleventh year
“ of the reign of his present
“ majesty, intituled, *An act*
“ *to explain and amend an*
“ *act, made in the last session*
“ *of parliament, intituled, An*
“ *act to regulate the trials of*
“ *controverted elections, or re-*
“ *turns of members to serve*
“ *in parliament, further regu-*
“ *lations were made therein:*
“ And whereas the provi-
“ sions of the said acts were,
“ by an act passed in the
“ fourteenth year of the
“ reign of his present ma-
“ jesty, continued and made
“ perpetual: And whereas,
“ by an act passed in the
“ twenty-fifth year of the
“ reign of his present ma-
“ jesty, intituled, *An act to*
“ *limit the duration of polls*
“ *and scrutinies, and for mak-*
“ *ing other regulations touch-*
“ *ing the election of members*
“ *to serve in parliament, for*
“ *places within England and*
“ *Wales, and for Berwick-*
“ *upon-Tweed; and also for*
“ *removing difficulties which*
“ *may arise for want of re-*
“ *turns being made of members*
“ *to serve in parliament, the*
“ provisions of the said acts
“ were extended, in the man-
“ ner therein mentioned, to
“ petitions complaining that
“ no return had been made
“ to a writ issued for the
“ election of a member or

“ members to serve in parlia-
“ ment, within the times li-
“ mited in the said act, or
“ that such a return was not
“ a return of a member or
“ members, according to the
“ requisition of the writ: And
“ whereas, by an act passed
“ in the twenty-eighth year
“ of the reign of his present
“ majesty, intituled, *An act*
“ *for the further regulation of*
“ *the trials of controverted elec-*
“ *tions, or returns of members*
“ *to serve in parliament, cer-*
“ *tain other regulations were*
“ *made for the execution of*
“ *the above-recited acts, and*
“ *for discouraging persons*
“ *from presenting frivolous or*
“ *vexatious petitions, or set-*
“ *ting up frivolous or vex-*
“ *atious defences, in any of*
“ *the cases to which the said*
“ *acts relate, and for the final*
“ *decision of questions re-*
“ *specting the rights of voting*
“ *at such elections, or of no-*
“ *minating or appointing the*
“ *returning officer or return-*
“ *ing officers who are to pre-*
“ *side thereat: and whereas*
“ *it is expedient that further*
“ *regulations should be made*
“ *for giving dispatch to the*
“ *execution of certain parts*
“ *of the said several acts,*
“ *Be it therefore enacted, by*
“ *the king's most excellent*
“ *majesty, by and with the*
“ *advice and consent of the*
“ *lords spiritual and tem-*

28 Geo.
3. c. 52.
ante, 22.

same day, under the before mentioned statutes of 10, 11, 14, 25, and 28 Geo. 3, or any of them;

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Provisions of
42 Geo. 3. c. 84.

“poral, and commons, in
“this present parliament as-
“sembled, and by the autho-
“rity of the same, that from
“and after this present ses-
“sion of parliament, where
“two or more petitions under
“and by virtue of the said
“recited acts, or any of
“them, are to be taken into
“consideration by the house
“of commons on the same
“day, it shall and may be
“lawful, after summoning
“the members and counting
“the house, in the manner
“directed by the said recited
“acts, to order all the peti-
“tioners and other parties,
“by themselves, their coun-
“sel, or agents, to attend
“within the house at the
“same time, before the door
“shall be locked, and after
“the list of forty-nine names
“of the members present
“hath been drawn by lot,
“and completed, in order to
“form the first committee,
“according to the direction
“of the said recited acts, it
“shall and may be lawful to
“proceed forthwith, and be-
“fore the door of the house
“shall be opened, except
“for the purpose hereinafter
“mentioned, to draw by lot,
“and complete in like man-
“ner, out of the same boxes
“or glasses, another list of
“forty-nine names of the re-
“mainning members present,

“in order to form the se-
“cond committee, according
“to the said directions; and
“in the same manner to draw
“by lot and complete, suc-
“cessive lists of forty-nine
“names of the remaining
“members present, in order
“to form the third and fourth
“or such other number of
“committees as may be re-
“quisite for the trial of such
“petitions; and the select
“committees for the trial
“and determination of such
“petitions, and the nominees
“thereto, shall then seve-
“rally be appointed accord-
“ing to the rules, directions,
“and regulations of the said
“recited acts, in like manner
“as if only one list of forty-
“nine names had then been
“formed.

§ 2. “Provided always,
“that it shall not nor may
“be lawful to proceed, in
“manner aforesaid, to form
“successive lists, in order
“to form more than one of
“such committees, unless
“one hundred and twenty
“members shall be present
“in the house at the time of
“counting the same; nor to
“form successive lists, in
“order to form more than
“two such committees, un-
“less two hundred mem-
“bers shall then be present
“in the house; nor to form
“successive lists, in order to

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Provisions of
42 Geo. 3. c. 84.

the object of that act being directed as well to the formation of select committees, and appoint-

“ form more than three such
“ committees, unless two
“ hundred and seventy mem-
“ bers shall then be present
“ in the house; nor to form
“ successive lists, in order to
“ form more than four such
“ committees, unless three
“ hundred and sixty members
“ shall then be present in the
“ house; nor to form succes-
“ sive lists, in order to form
“ more than five such commit-
“ tees, unless four hundred
“ and sixty members shall
“ then be present in the house.

§ 3. “ Provided always,
“ that in case the house shall
“ proceed, in manner afore-
“ said, to form successive
“ lists, in order to form two
“ or more such committees,
“ and any member whose
“ name is drawn shall be
“ excused for some reason
“ which applies especially to
“ any one petition, the name
“ of such member shall be
“ returned into the box or
“ glass from whence it has
“ been taken, so that it may be
“ again drawn by lot upon any
“ of the following petitions.

§ 4. “ Provided also, and
“ be it further enacted, that
“ if, upon drawing out the
“ name of any member by
“ lot upon one of such peti-
“ tions, the petitioners or
“ sitting members, or the
“ agents, who shall have been
“ ordered, under or by virtue

“ of this act, to attend within
“ the house upon any other
“ petition, shall declare, that
“ such member is intended
“ to be one of the two
“ nominees nominated by
“ them respectively; and if
“ such member shall consent
“ to such nomination, the
“ name of such member so
“ drawn shall be set aside,
“ and another member shall
“ be drawn to supply his
“ place, to complete the
“ number of forty-nine to be
“ drawn by lot.

§ 5. “ Provided also, that
“ if two or more such peti-
“ tions are to be taken into
“ consideration on the same
“ day, and it shall happen,
“ by reason that a sufficient
“ number of members liable
“ to serve are not present in
“ the house, that successive
“ lists cannot be formed, in
“ manner aforesaid, upon all
“ such petitions; yet the
“ house may nevertheless
“ proceed to form the list
“ or lists, and appoint the
“ select committee or com-
“ mittees upon one or more
“ of such petitions, as far as
“ they are enabled so to do
“ by the number of members
“ present, and may, after
“ such appointment, proceed
“ to any other business; and
“ the order or orders for
“ taking the remaining pe-
“ tition or petitions into con-

ment of nominees, as to the other business of the house upon such occasions. Some additional

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Provisions of
42 Geo. 3. c. 84.

“sideration shall be adjourn-
“ed, as directed by the said
“recited acts, in cases where
“petitions cannot be taken
“into consideration on the
“day appointed for want of
“sufficient attendance.

§ 6. “Provided always, and
“be it further enacted, that
“it shall be lawful for the pe-
“titioners and other parties,
“and their counsel or agents,
“to withdraw from the house
“as soon as the lists of forty-
“nine names shall have been
“drawn, in order to form the
“committee for the trial of
“such petition respectively;
“and for the clerk appointed
“to attend the said com-
“mittee, to return the re-
“duced list in the time in-
“tervening between any two
“ballots; and the members
“remaining upon any of the
“said reduced lists, toge-
“ther with the two members
“who shall be appointed as
“nominees, shall be sworn at
“the table, and shall be at
“liberty forthwith to depart
“from the house.

§ 7. “Provided also, and
“be it further enacted, that
“when, on a complaint by a
“petition of an undue elec-
“tion or return, there shall
“be more than two parties
“before the house on dis-
“tinct interests, or com-
“plaining or complained of
“upon different grounds, the

“thirteen members returned
“to the house, by virtue of
“the aforesaid act, passed in
“the eleventh year of his
“present majesty’s reign,
“shall not choose their no-
“minees until all the other
“select committees to be bal-
“lotted for on that day shall
“have been sworn: provided
“also, that if two or more
“committees shall be ap-
“pointed on the same day,
“to decide on any petition
“whereon there shall be more
“than two parties as afore-
“said before the house, the
“committee which shall have
“been first ballotted for shall
“have the preference in the
“choice of members to serve
“as nominees.

§ 8. “And be it further
“enacted, that every such
“committee appointed for
“the trial and determination
“of any petition under and
“by virtue of the said re-
“cited acts, and of this act,
“shall or may be attended
“by a person well skilled in
“the art of writing short
“hand, who shall be espe-
“cially appointed by the
“clerk of the house of com-
“mons for the time being,
“and sworn by the chairman
“faithfully and truly to take
“down, in short hand, the
“evidence adduced before
“the said committee, and
“from day to day, as occa-

11 Geo. 3. c.
42. § 6. ante,
47, 48.

(See 47 Geo. 3.
sess. 1. c. 1.
§ 2. post, 52.
53 Geo. 3. c.
71. § 20. post,
63.)

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Provisions of
42 Geo. 3. c. 84.

provisions were also made with respect to taking the evidence before select committees.

This act, which was to continue for a limited time, was suffered to expire, but the stat. 47 Geo. 3. sess. 1. c. 1. (a) revived it, and made it perpe-

“ sion may require, to tran-
“ scribe, or to cause the same
“ to be transcribed, in words
“ at length, for the use of
“ the said committee.

§ 9. “ And be it further
“ enacted, that this act shall
“ continue in force two years,
“ and from thence till the
“ end of the session of par-
“ liament next after the ex-
“ piration of the said two
“ years, and no longer.”

(a) The stat. 47 Geo. 3.
Sess. 1. c. 1. “ *An Act to*
“ *revive and make perpetual,*
“ *and to amend an Act, made in*
“ *the forty-second Year of his*
“ *present Majesty, for the*
“ *further Regulation of the*
“ *Trials of controverted Elec-*
“ *tions, or Returns of Members*
“ *to serve in Parliament, and*
“ *for expediting the Proceed-*
“ *ings relating thereto.*” [A. D.
1807.]

“ Whereas it is expedient
“ that an act, made in the
“ forty-second year of the
“ reign of his present majes-
“ ty, intituled, *An act for the*
“ *further regulation of the*
“ *trials of controverted elec-*
“ *tions, or returns of mem-*
“ *bers, to serve in parliament,*
“ *and for expediting the pro-*

“ *ceedings relating thereto,*
“ which was to continue in
“ force two years, and from
“ thence till the end of the
“ session of parliament next
“ after the expiration of the
“ said two years, and no
“ longer, should be revived
“ and made perpetual:” “ *Be*
“ *it therefore enacted, by the*
“ *king's most excellent ma-*
“ *jesty, by and with the ad-*
“ *vice and consent of the*
“ *lords spiritual and tem-*
“ *poral, and commons, in this*
“ *present parliament assem-*
“ *bled, and by the authority*
“ *of the same, that the said re-*
“ *cited act shall, from and*
“ *after the passing of this act,*
“ *be, and the same is hereby*
“ *revived, and the said recited*
“ *act shall be, and the same is*
“ *hereby made perpetual.*”

§ 2. “ Provided always,
“ and be it enacted, that
“ whenever, on any com-
“ plaint by petition, under
“ or by virtue of any act or
“ acts for the regulation of
“ the trials of controverted
“ elections, or returns of
“ members to serve in parlia-
“ ment, it shall happen that
“ the thirteen members re-
“ turned to the house of

42 Geo. 3. c.
84. ante, 47.

tual; the legislature at the same time taking
 occasion by this latter act, to make some further
 regulations with regard to the appointment of
 nominees.

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Provisions of
47 Geo. 3. sess.
1. c. 1.

These several statutes have been followed by
 that of the 53 Geo. 3. c. 71. (a) which was passed

11 Geo. 3. c. 42. § 6. *ante*, 47, 48. 42 Geo. 3. c. 84. § 7, *ante*, 51.

“ commons under the direc-
 “ tions of the said acts, or
 “ any or either of them, shall
 “ be entitled, by virtue of any
 “ regulations or provisions in
 “ any of the said recited acts,
 “ to choose two members or
 “ one member (as the case
 “ may require) to be added
 “ to the thirteen members
 “ for the completion of the
 “ committee to try such pe-
 “ tition, such thirteen mem-
 “ bers shall not choose such
 “ two members or one mem-
 “ ber to be added as afore-
 “ said, until all the other
 “ select committees to be
 “ ballotted for on that day
 “ (in the appointing of which
 “ the parties before the
 “ house shall name two mem-
 “ bers to be added to the
 “ members drawn by lot)
 “ shall have been sworn, if
 “ such committees, or any of
 “ them, can be completed:
 “ provided also, that if two
 “ or more committees shall
 “ be ballotted for on the
 “ same day, for the comple-
 “ tion of which it shall happen
 “ that the thirteen members

“ returned to the house shall
 “ be entitled to choose two
 “ members or one member as
 “ aforesaid, then the thirteen
 “ members on the committee
 “ or committees which shall
 “ have been first ballotted
 “ for, shall have the pre-
 “ ference successively in
 “ choosing such member or
 “ members for the com-
 “ pletion of such committee
 “ or committees.”

(a) The stat. 53 Geo. 3.
 c. 71. “ *An Act for amending
 “ and rendering more effectual
 “ the Laws for the Trials of con-
 “ troverted Elections and Re-
 “ turns of Members to serve in
 “ Parliament.*” [A.D. 1813.]

“ Whereas divers acts of
 “ parliament have been made
 “ for regulating the trial of
 “ controverted elections or
 “ returns of members to serve
 “ in parliament: And whereas
 “ it is expedient that further
 “ regulations should be made
 “ for that purpose;” “ *Be it
 “ enacted* by the king’s most
 “ excellent majesty, by and
 “ with the advice and con-
 “ sent of the lords spiritual

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to amend the law and render it more effectual, as to several points, upon which it was considered to be capable of improvement.

“and temporal, and com-
“mons, in this present par-
“liament assembled, and by
“the authority of the same,
“that in all cases of contro-
“verted elections, or returns
“of members to serve in
“parliament for *Great Bri-*
“*tain*, all the parties com-
“plaining of or defending
“such elections or returns
“shall by themselves or their
“agents deliver in to the
“clerk of the house of com-
“mons, lists of the voters in-
“tended to be objected to,
“to be by the said clerk
“kept in his office, open to
“the inspection of all parties
“concerned; giving in the
“said lists the several heads
“of objections, and distin-
“guishing the same against
“the names of the voters
“excepted to; and that such
“lists shall be so delivered
“in upon all controverted
“elections and returns for
“*Scotland*, or for any county
“in *England* or *Wales*, ten
“days at least before the
“day appointed for the con-
“sideration of the petition
“complaining of such elec-
“tion and return; and upon
“all other controverted
“elections or returns for
“*England* or *Wales*, five days
“at least before the day ap-
“pointed for the considera-

“tion of such petition: pro-
“vided always, and be it
“enacted, that if the con-
“sideration of any such peti-
“tion shall be postponed by
“order of the house during
“the same session, or shall
“be renewed at the com-
“mencement of another ses-
“sion, it shall be sufficient if
“such lists shall be so de-
“livered within such periods
“as are hereby directed,
“before the committees
“for the trial of such peti-
“tions shall be actually ap-
“pointed.

§ 2. “And be it further
“enacted, that no evidence
“shall be adduced before the
“select committee appointed
“for the trial of the petition
“upon which such list shall
“have been delivered in,
“against the validity of any
“vote upon any head of objec-
“tion to such voter, other than
“one of the heads so specified
“and particularized against
“him in such list as afore-
“said; and that if any ground
“of objection shall be stated
“against any voter in such
“lists, and no evidence shall
“be produced before such
“select committee, to sub-
“stantiate such objection,
“and if such select com-
“mittee shall be of opinion
“that such objection was

The points to which such amendments have been directed are those which regard the ex-

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“frivolous or vexatious, the
“said committee shall re-
“port the same to the house
“of commons, together
“with their opinion on
“the other matters relat-
“ing to the said petition;
“and the party or parties
“opposite shall in such case
“be entitled to recover from
“the party or parties by
“whom or on whose behalf
“any such objections were
“made, the full costs and
“expences incurred by
“reason of such frivolous
“or vexatious objections;
“which costs and expences
“shall be ascertained and
“recovered in the same
“manner and form as are
“now provided by law for
“the recovery of costs and
“expences in cases of fri-
“volous or vexatious peti-
“tions.

§ 3. “And whereas it is ex-
“pedient that provision shall
“be made to ensure the more
“punctual payment of all
“costs, expences, and fees
“which may become due to
“witnesses, officers of the
“house, and parties, by rea-
“son of the trial of contro-
“verted elections;” “be it
“further enacted, that no
“proceeding shall be had
“on any petition by virtue
“of any act concerning the
“trial of controverted elec-
“tions and returns, unless
“the person or persons sub-

“scribing the same, or some
“one or more of them, shall
“within fourteen days after
“the same shall have been
“presented to the house, or
“within such further time
“as shall be limited by the
“house, personally enter into
“a recognizance to our
“sovereign lord the king,
“according to the form here-
“unto annexed, in the sum
“of one thousand pounds,
“with two sufficient sureties
“in the sum of five hundred
“pounds each, for the pay-
“ment of all costs, expences,
“and fees which shall be-
“come due to any witness
“summoned in behalf of the
“person or persons so sub-
“scribing such petition, or
“to any clerk or officer of
“the house upon the trial of
“the said petition, or to the
“party who shall appear be-
“fore the house or com-
“mittee in opposition to such
“petition, in case such per-
“son or persons shall fail
“to appear before the house
“at such time or times as
“shall be fixed by the house
“for taking such petition
“into consideration; or in
“case the said petition shall
“be withdrawn by the per-
“mission of the house; or in
“case such committee shall
“report to the house that
“the said petition appears to
“them to be frivolous or
“vexatious; and if at the

See 28 Geo. 3.
c. 52. § 5. ante,
25.

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53 Geo. 3. c. 71.

change of lists of votes intended to be objected to on either side upon the trial of a petition, and

“ expiration of the said four-
“ teen days, such recogni-
“ zance shall not have been
“ entered into, or shall not
“ have been received by the
“ speaker of the house of
“ commons, the speaker shall
“ report the same to the
“ house, and the order for
“ taking such petition into
“ consideration shall there-
“ upon be discharged, unless
“ upon matter specially stated
“ and verified on oath to the
“ satisfaction of the house,
“ the house shall see cause to
“ enlarge the time for enter-
“ ing into such recognizance;
“ and whenever such time
“ shall be so enlarged, the
“ order for taking such pe-
“ tition into consideration
“ shall, if necessary, be post-
“ poned, so that no such pe-
“ tition shall be taken into
“ consideration till after such
“ recognizance shall have
“ been entered into and re-
“ ceived by the speaker:
“ provided always, that the
“ time for entering into such
“ recognizance shall not be
“ enlarged more than once,
“ or for any number of days
“ exceeding thirty.

§ 4. “ And be it enacted,
“ that eight days at least
“ before the person or per-
“ sons so petitioning shall
“ enter into the said recog-
“ nizance, he or they, by
“ themselves or their agents,
“ shall deliver in writing to

“ the clerk of the house of
“ commons, the names of the
“ sureties who are proposed
“ to enter into such recog-
“ nizance; which names shall
“ be entered in a book to be
“ kept by the said clerk, in
“ his office, open to the in-
“ spection of all parties con-
“ cerned.

§ 5. “ And be it further
“ enacted, that the said re-
“ cognizance shall be entered
“ into, and that the sufficiency
“ of the sureties named
“ therein shall be allowed
“ and judged of in like man-
“ ner and under such regu-
“ lations as are enacted by
“ an act passed in the twenty-
“ eighth year of his majesty's
“ reign, and intituled *an act*
“ *for the further regulation of*
“ *the trials of controverted*
“ *elections or returns of mem-*
“ *bers to serve in parliament,*
“ with respect to the recog-
“ nizance therein directed to
“ be entered into by persons
“ presenting petitions com-
“ plaining of undue elections
“ or returns.

§ 6. “ Provided always,
“ and be it further enacted,
“ that it shall and may be
“ lawful for the same per-
“ sons, if sufficient, to be-
“ come sureties in the re-
“ cognizance herein directed,
“ and in the recognizance
“ directed by the said recited
“ act, and that the names of
“ the sureties who are pro-

28 Geo.
3. c. 52.
§ 6, 7.
ante, 26.

the evidence thereupon as connected with such lists; the recovery of costs from parties making

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“ posed to enter into the said
“ last mentioned recogni-
“ zance shall be in like man-
“ ner delivered to the clerk
“ of the house of commons,
“ and entered by him as is
“ herein-before directed with
“ respect to the sureties in
“ the said first-mentioned re-
“ cognizance.

§ 7. “ And be it further
“ enacted, that in all cases
“ where any question shall
“ arise, as to the amount of
“ the reasonable costs, ex-
“ pences or fees, which shall
“ be due and payable to any
“ witness, or to any clerk or
“ officer of the house of com-
“ mons, upon the trial of any
“ such petition, the speaker
“ of the said house shall, on
“ application, direct the same
“ to be taxed by such persons
“ and in like manner as by
“ the said recited act is di-
“ rected for the taxing of
“ costs and expences in all
“ cases where petitions or
“ the opposition to such pe-
“ titions have been declared
“ to be frivolous or vexatious;
“ and the persons so autho-
“ rized and directed to tax
“ such costs, expences and
“ fees, shall and they are
“ hereby required to examine
“ the same, and to report the
“ amount thereof to the
“ speaker, who shall, on ap-
“ plication, deliver to the
“ person or persons con-

“ cerned, a certificate, signed
“ by himself, expressing the
“ amount of the fees, costs
“ and expences allowed in
“ such report; and the per-
“ sons so appointed to tax
“ such costs, expences and
“ fees, are hereby authorized
“ to demand and receive for
“ such taxation and report,
“ such fees as shall be from
“ time to time fixed by any
“ resolution of the house;
“ and the said certificates, so
“ signed by the speaker, shall
“ be conclusive evidence of
“ the amount of such de-
“ mands; and the witness,
“ officer, or party claiming
“ under the same shall, upon
“ payment thereof, give a re-
“ ceipt at the foot of such
“ certificate, which shall be
“ a sufficient discharge for
“ the same.

§ 8. “ And whereas it is
“ enacted by the said re-
“ cited act, that the house
“ shall not permit any peti-
“ tion complaining of an un-
“ due election or return to
“ be withdrawn, except in
“ the cases therein mention-
“ ed;” “ be it further enact-
“ ed, that it shall and may be
“ lawful for the house to per-
“ mit any such petition, on
“ any petition presented in
“ pursuance of the said re-
“ cited act, to be withdrawn
“ upon matter which shall
“ have arisen since the same

28 Geo. 3. c.
52. § 8. ante,
27.

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53 Geo. 3. c. 71.

frivolous or vexatious objections to voters ; the increasing and regulating the recognizances re-

“ was presented, and which
“ shall be specially stated and
“ verified on oath to the sa-
“ tisfaction of the house.

§ 9. “ And be it further
“ enacted, that in all cases
“ where the petitioner or
“ petitioners shall fail to
“ appear before the house
“ by himself or themselves,
“ or by his or their coun-
“ sel or agents, at the time
“ fixed for the appoint-
“ ment of the select com-
“ mittee, the house not having
“ permitted such petition to
“ be withdrawn, and the or-
“ der for the consideration of
“ such petition shall be there-
“ upon discharged in pur-
“ suance of the said recited
“ act of the twenty-eighth
“ year of his majesty’s reign,
“ the party or parties who
“ shall attend the house in
“ opposition to such petition
“ shall in like manner be en-
“ titled to recover from such
“ petitioner or petitioners the
“ full costs and expences
“ which they shall have in-
“ curred by reason of such
“ petition.

§ 10. “ And be it further
“ enacted, that in all cases
“ the persons so authorized
“ and directed (in pursuance
“ of this act, or of the said
“ recited act) by the speaker
“ of the house of commons,
“ to tax such costs and ex-
“ pences, shall allow all

“ reasonable costs as between
“ attorney and client.

§ 11. “ And be it enacted,
“ that each of the persons so
“ authorized and directed by
“ the speaker of the house
“ of commons, in pursuance
“ of the said recited act or
“ this act, to tax such costs,
“ expences, or fees, and also
“ any master of the high
“ court of chancery, or any
“ of his majesty’s justices of
“ the peace, shall be, and
“ they and each of them are
“ hereby authorized and em-
“ powered to take any affidavit
“ relative to such costs, ex-
“ pences or fees, or the
“ taxation or non-payment
“ thereof, and to administer
“ the oath for taking such
“ affidavit ; and also that each
“ of the persons who shall be
“ authorized to examine the
“ sufficiency of sureties to be
“ named in the recognizances
“ mentioned in the said act
“ or this act, (besides the
“ persons therein mention-
“ ed,) shall have power and
“ authority to take any affi-
“ davit relative to such sure-
“ ties, or to the entering into
“ any recognizance, and to
“ administer the oath for
“ taking such affidavit ; and
“ that all and every person or
“ persons convicted of wil-
“ fully false swearing in any
“ such affidavit or affidavits,
“ shall be deemed guilty of,

quired of petitioners, and their sureties; the taxation of costs and expences of witnesses, and

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53 Geo. 3. c. 71.

“ and suffer the penalties on
“ persons convicted of wilful
“ and corrupt perjury.

§ 12. “ And be it enacted,
“ that if the petitioner or
“ petitioners who shall have
“ entered into such recogni-
“ zance as aforesaid shall
“ neglect or refuse, for the
“ space of seven days after
“ demand, to pay to any wit-
“ ness who shall have been
“ summoned on his or their
“ behalf before the house, or
“ such select committee, on
“ the trial of the said petition,
“ the sum so certified as
“ aforesaid by the speaker to
“ be due to such witness, to-
“ gether with the further
“ sum of forty shillings *per*
“ *diem* for every day during
“ which such petitioner or
“ petitioners shall delay to
“ satisfy the same; or if such
“ petitioner or petitioners
“ shall neglect or refuse, for
“ the space of six months
“ after demand, to pay to
“ any officer of the house, or
“ to any party who shall ap-
“ pear in opposition to their
“ said petition, the sum so
“ certified by the speaker in
“ pursuance of this act, or
“ of the said recited act of
“ the twenty-eighth year of
“ his majesty’s reign, to be
“ due to such officer or party
“ for their fees, costs, or
“ expences, and that such
“ neglect or refusal shall be

“ proved to the speaker’s sa-
“ tisfaction by affidavit sworn
“ before any master of the
“ high court of chancery, and
“ such master is hereby au-
“ thorized to administer such
“ oath, and is authorized and
“ required to certify such
“ affidavit under his hand; in
“ every such case such person
“ or persons shall be held to
“ have made default in his
“ or their said recognizance;
“ and the speaker of the
“ house of commons shall
“ thereupon certify such re-
“ cognizance into the court
“ of exchequer, and shall also
“ certify, that such person
“ or persons have made de-
“ fault therein, and such cer-
“ tificate shall be conclusive
“ evidence of such default,
“ and the recognizance being
“ so certified shall have the
“ same effect as if the same
“ were estreated from a court
“ of law: provided always,
“ that such recognizance and
“ certificate shall in every
“ such case be delivered by
“ the clerk, deputy clerk, or
“ one of the clerks assistant
“ of the house of commons,
“ into the hands of the lord
“ chief baron of the ex-
“ chequer, or of one of the
“ barons of the exchequer,
“ or of such officer as shall
“ be appointed by the said
“ court to receive the same.

§ 13. “ And be it further

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clerks or officers of the house of commons; the withdrawing petitions in certain cases; the dis-

“ enacted, that in any ac-
“ tion which shall be com-
“ menced for the recovery of
“ any costs, expences, or
“ fees which shall have been
“ certified by the speaker, in
“ pursuance of this act or the
“ said recited act, to be due
“ and payable, such certifi-
“ cate so signed as aforesaid
“ by him, shall have the force
“ and effect of a warrant of
“ attorney to confess judg-
“ ment; and the court in
“ which such action shall be
“ commenced shall upon mo-
“ tion, and on the produc-
“ tion of such certificate,
“ enter up judgment for the
“ sum specified in such certi-
“ ficate to be due from the
“ defendant or defendants in
“ such action, in like man-
“ ner as if the said defendant
“ or defendants had signed a
“ warrant to confess judg-
“ ment in the said action to
“ that amount.

§ 14. “ Provided always,
“ and be it further enacted,
“ that the several rules and
“ regulations herein before
“ enacted, by which certain
“ persons are directed to en-
“ ter into recognizances, and
“ by which certain persons
“ are made liable to the pay-
“ ment of costs to the oppo-
“ site parties, in the parti-
“ cular manner and in the
“ several cases herein before
“ specified, shall not be con-

“ strued to apply to the case
“ of any petition presented
“ in pursuance of the said re-
“ cited act of the twenty-
“ eighth year of his majesty’s
“ reign, and relating solely
“ to any question or ques-
“ tions respecting the right
“ of election, or of choosing,
“ nominating, or appointing a
“ returning officer or officers.

§ 15. “ And whereas, by
“ the said act passed in the
“ twenty-eighth year of the
“ reign of his present ma-
“ jesty, it is provided, that
“ any person or persons may,
“ within twelve calendar
“ months, present a petition
“ to the house, opposing any
“ such determination respect-
“ ing the right of election,
“ or the right of choosing,
“ nominating, or appointing
“ such returning officer or
“ returning officers, or with-
“ in fourteen days after the
“ commencement of the next
“ session of parliament after
“ that in which such deter-
“ mination shall have been
“ reported to the house, and
“ that forty days shall inter-
“ vene between the day of
“ presenting such petition to
“ the house and the day
“ appointed for taking the
“ same into consideration;
“ and the allowing of so
“ much time for the purpose
“ aforesaid has been found
“ to be inconvenient and un-

28 Geo.
3. c. 52.
§ 26.
ante, 35.

charging petitions upon the non-appearance of petitioners, the payment and taxation of costs

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53 Geo. 3. c. 71.

“ necessary; be it enacted,
“ that whenever any such re-
“ port with respect to such
“ rights, any or either of
“ them, shall be made to the
“ house, it shall and may be
“ lawful for any person or
“ persons, within six months
“ next after the day on which
“ such report shall have been
“ made to the house, or in
“ case such six months shall
“ end between the time when
“ the present or any future
“ parliament shall be dis-
“ solved or shall expire, and
“ the day on which the next
“ parliament shall meet; or
“ in case such six months shall
“ expire during any recess,
“ either by the prorogation
“ of parliament, or by the ad-
“ journment of the house of
“ commons for fourteen days
“ intervening between the
“ day of adjournment, and
“ the day to which the house
“ shall be so adjourned, then
“ within fourteen days next
“ after the first day of the
“ next parliament, or of the
“ next session of the same
“ parliament, or of the next
“ meeting of the house of
“ commons, as the case may
“ be, to petition the house
“ to be admitted as a party
“ or parties to oppose those
“ rights any or either of
“ them, which shall have
“ been deemed valid in the
“ judgment of such select

“ committee; and that such
“ petition when presented
“ shall be ordered by the
“ house to lie on the table till
“ such six months, or such
“ fourteen days as aforesaid,
“ shall be expired; and that
“ within twenty-one sitting
“ days after the expiration of
“ such six months or fourteen
“ days, a day and hour shall
“ be appointed by the house
“ for taking the same into
“ consideration, so that the
“ space of fourteen days at
“ the least shall always inter-
“ vene between the day on
“ which such order shall be
“ made and the day appointed
“ by the house for taking the
“ same into consideration;
“ and such day and hour
“ may from time to time be
“ altered, as to the house
“ shall seem fit; and notices
“ of such day and hour, and
“ of such alteration thereof,
“ shall be sent to the several
“ persons who have petitioned
“ the house respecting such
“ rights, in like manner as is
“ done in other cases; any
“ thing in the said last-men-
“ tioned act to the contrary
“ notwithstanding.

§ 16. “ And whereas it is
“ not fit that any member
“ having served on a select
“ committee, who shall have
“ reported to the house their
“ determination with respect
“ to the right of election, or

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53 Geo. 3. c. 71.

in such cases ; the examination of the sufficiency of sureties upon the recognizances of petition-

“ the right of choosing, no-
“ minating or appointing any
“ returning officer or return-
“ ing officers, under and by
“ virtue of the said recited
“ act, should also serve on a
“ select committee to be ap-
“ pointed to try the merits of
“ a petition opposing such de-
“ termination;” “ be it enact-
“ ed, that if upon the appoint-
“ ment of any such last-men-
“ tioned select committee,
“ the name of any member
“ shall be drawn who served
“ on such former committee,
“ and was present at the
“ time of such determination,
“ his name shall be set aside.

§ 17. “ And whereas by
“ the said recited act, cer-
“ tain notices and reports
“ are ordered to be given
“ and inserted in the next
“ *London Gazette*, which di-
“ rection cannot in many
“ cases be complied with;”
“ be it enacted, that in all
“ cases where any such no-
“ tice or proceeding is di-
“ rected to be published in
“ the next *London Gazette*,
“ it shall be sufficient if the
“ same is published in one of
“ the two next *London Ga-
“ zettes*; any thing in the said
“ act to the contrary not-
“ withstanding.

§ 18. “ And for avoiding
“ and preventing all doubts
“ respecting the appointment
“ of any select committee,

“ under and by virtue of any
“ act concerning the trial of
“ controverted elections and
“ returns, by reason of any
“ of the members of the said
“ committee not being duly
“ qualified to serve upon such
“ committee;” “ be it enacted,
“ that every select committee
“ which shall be appointed
“ under and by virtue of the
“ said acts or any of them,
“ shall be deemed and taken
“ to have been and to be
“ legally appointed, from and
“ after the time of any such
“ select committee having
“ been sworn at the table in
“ the usual manner.

§ 19. “ And whereas doubts
“ have arisen as to the au-
“ thority of such select com-
“ mittees to examine as a
“ witness any person who
“ may have subscribed the
“ petition, to try and deter-
“ mine which such committee
“ shall have been appointed;”
“ be it hereby declared and
“ enacted, that it is and shall
“ be lawful for any such se-
“ lect committee, duly con-
“ stituted for the trial of con-
“ troverted elections or re-
“ turns, to examine any per-
“ son, although he shall have
“ subscribed such petition;
“ except it shall otherwise
“ appear to such committee
“ that such person shall be
“ an interested witness.

§ 20. “ And whereas by

ers; the forfeiture of recognizances on non-payment of costs of witnesses, and money due

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Provisions of
53 Geo. 3. c. 71.

11 Geo.
3. c. 42.
§ 6. ante,
18.

“ an act passed in the eleventh
“ year of his present majesty,
“ and intituled *An act to ex-
“ plain and amend an act made
“ in the last session of parlia-
“ ment, intituled, An act to re-
“ gulate the trials of contro-
“ verted elections, and of re-
“ turns of members to serve in
“ parliament, it is among
“ other things enacted, that
“ in the cases therein pro-
“ vided, the thirteen mem-
“ bers whose names shall be
“ returned by the parties to
“ the house, shall by them-
“ selves choose two mem-
“ bers then present in the
“ house to be added to the
“ said thirteen members;”
“ be it enacted, that either of
“ the members so chosen
“ shall or may be set aside
“ for any of the same causes
“ as those chosen by lot.*

*Form of Recognizance referred
to in this Act.*

“ BE it remembered, That
“ on the day of
“ in the year of our Lord
“ before
“ me A. B. (speaker of the
“ house of commons) or, (one
“ of his majesty's justices of
“ the peace for the county of
“) came C. D. E. F.
“ and J. G. and severally ac-
“ knowledged themselves to owe
“ to our sovereign lord the
“ king the following sums; that
“ is to say, the said C. D.

“ the sum of one thousand
“ pounds, and the said E. F.
“ and the said J. G. the sum of
“ five hundred pounds each,
“ to be levied on their respec-
“ tive goods and chattels, lands
“ and tenements, to the use of
“ our said sovereign lord the
“ king, his heirs and succes-
“ sors, in case the said C. D.
“ shall fail in performing the
“ condition hereunto annexed.

“ THE CONDITION of
“ this recognizance is, that
“ if the said C. D. shall well
“ and truly pay all costs and
“ expences and fees which
“ shall be due and payable
“ from the said petitioner to
“ any witness who shall be
“ summoned to give evidence
“ in his behalf, or to any
“ clerk or officer of the house
“ of commons, upon the trial
“ of the petition signed by the
“ said C. D. complaining of
“ an undue election or return
“ for the [here state the
“ county, city, borough,
“ or district of burghs] or
“ complaining that no return
“ has been made for the said
“ within the time
“ limited by act of parlia-
“ ment, or that the return
“ made for the said
“ is not a return of a mem-
“ ber or members according
“ to the requisition of the
“ writ: And if the said pe-
“ titioner shall also well and

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Provisions of
53 Geo. 3. c. 71.

by reason of delay of payment, and the consequences of such forfeiture; the further limitation of the time for presenting petitions of appeal as to rights of election, or of appointment of returning officers, and the regulation of the proceedings in such cases; together with some additional provisions respecting the notices, directed by the 28 Geo. 3. c. 52., and other matters relating to the trial of petitions, examination of witnesses, and appointment of nominees.

It is to be observed that the tribunal which is thus constituted being the creature of these several statutes, can only attach in cases which are immediately within their letter; hence, as will be subsequently seen, the question often arises, whether the subject matter of a petition is, or not, within them.

Strictly speaking, the original jurisdiction of the house of commons is merely broken in

*“truly pay the costs and ex-
pences of the party who
shall appear before the
house in opposition to the
said petition, in case the
said petitioner shall fail
to appear before the house
at such time or times as
shall be fixed by the house
for taking such petition
into consideration; or, in
case the said C. D. shall
withdraw his said petition*

*“by the permission of the
house; or, in case the
select committee appointed
by the house to try the
matter of the said petition,
shall report to the house
that the said petition ap-
pears to them to be fri-
volous or vexatious; then
this recognizance to be
void, otherwise to be of
full force and effect.”*

upon, so far as the new jurisdiction is given, the statutes only operating to exclude the one, in proportion as they have substituted the other.

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But the house, in withdrawing its consideration from such subjects, upon the alteration introduced by the acts, in order to give the fullest effect to the now existing law, has not decided with technical nicety, upon the line of distinction; and has in many instances, though it should seem that the statutes (a) did not necessarily call upon them to do so, rejected petitions of a nature not immediately (though very nearly) within the scope of the statutes, and which they would before have entertained.

The jurisdiction of select committees never attaches but upon a petition, and therefore in matters which are not thus made cognizable by such committees, the powers of the house remain as before.

The resolution in *Glanville*, in the case of *Glanv. 119. Middlesex*, “that the house may of themselves question any election or return, although no party grieved do ever complain,” is still to be

(a) See the cases of *Lyme* — *Bedfordshire*, 1784, *post*, *Regis*, 1727, *post*, 68.— 72.— *Colchester*, 1789, *post*, *Bridgewater*, 1768, *post*, 69. 73.— *Bodmin*, 1790, *post*, 73.— *Worcester*, 1781, *post*, 70. — *Middlesex*, 1802, *post*, 74.— *Westminster*, 1784, *post*, 70.

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regarded as the law of parliament, and it is open to the house to examine all matters relating to elections as before, except upon petitions in the cases where these acts have specifically directed another course.

Ante, 1 vol. 74,
(where see the
references.)

Thus, the eligibility of Mr. *Horne Tooke*, in the before-mentioned case of *Old Sarum*, in 1801, was brought in question and discussed, not upon petition, but upon a motion for a new writ, upon the ground of his incapacity, by a member of the house (*a*). It should be observed however that this proceeding was not resorted to until the time for petitioning against the return had elapsed.

SECTION 2. *In what cases resort may or may not be had to such jurisdiction.*

IT has been already mentioned that a party having ground of complaint upon election mat-

(*a*) The course has been the same when it has been considered that there has been a ground of expulsion from the house. See the proceedings in the case of Lord *Cochrane*, who having been convicted of a fraud upon the stock-exchange, by exciting false rumours whereby the funds were raised, was expelled the house. 23d, 24th, 29th June, and 5th July, 1814. 69 Journ. 374. 381. 407. 427, *et seq* and see the references of the cases, 1 vol. 117, *et seq*.

ters, can only obtain relief by petition to the house of commons. It is therefore necessary to inquire both generally into the nature of the cases which are proper for such petitions, and into the particular requisites of the law with respect to the petitions themselves. The present chapter will be confined to the former of these inquiries.

It is competent to any person to offer a petition to the house of commons upon any subject, provided he can prevail upon a member to present it; but with regard to an election petition, it must come within some one of certain descriptions to ensure its reception in the house.

The restrictions of the law, in this respect, depend partly upon the directions and necessary effect of the statutes, and partly upon the practice of the house.

The statutes have, in certain cases, directed that election petitions should be put under the consideration of select committees; and the necessary consequence is, that such cases are taken away from the jurisdiction of the house, just so far as jurisdiction is given to such committees. This latter jurisdiction must be taken

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See post, 79,
etc eq

in the manner, and with the qualifications under which it is given. These will appear in the course of the following chapter.

With respect to the restrictions alluded to as depending upon the practice of the house, they appear to have grown up since the passing of the *Grenville* act, in consequence of, and in unison with the statutes, rather than to have formed any part of the settled law of parliament before that time.

These latter restrictions are such as aim at petitions, not of candidates, or of electors petitioning in their favour, but of persons denying the pretensions of candidates, or electors so petitioning.

Counter petitions formerly received by the house.

Petitions of these and the like descriptions (a), were formerly received by the house, as appears from the cases of *Lyme Regis*, 2d, 3d, 17th, and

(a) In the case of *East Retford*, Glanv. 129. A petition of electors was presented against the return of Mr. *Darcy*, supposing it to be void; and also another petition, supposing Mr. *Darcy* to be duly elected, charging certain persons with undue practices, to have procured the election of Sir *Edward*

Wortley, the other candidate. This latter petition was received and gone into, although Mr. *Darcy* died before the hearing of the case. The other petition was held to be not examinable, it not being suggested that Sir *Edward Wortley's* election was good, but only that Mr. *Darcy's* was void.

28th Feb. 1727 (a), *Bridgewater*, 10th and 18th and 21st Nov. 1768 (b), and indeed from the principle of the latter decision in that of *Westminster*, 25th May, 1784 (c); but since these acts, a preliminary question has been raised in many cases, whether the petitions did or did not come within their operation; and in several instances, petitions have been rejected, upon the ground of the statutes not reaching them, and that if such petitions were to be entertained at all, it must be by the house; the effect of which would be, that trials respecting the same election would be going on in different jurisdictions.

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21 Journ. 33.
35. 58. 68.
32 Journ. 28.
44. 48. 301.

(a) 2d February, 1727.—Mr. *Henley* petitioned against the return of Mr. *Burridge*.—17th February, a petition was presented from certain electors, alleging that Mr. *Burridge* and the other sitting member were elected, by a majority of legal votes, and praying such relief as the house should think fit against the pretensions of Mr. *Henley* to be one of the burgesses of the said borough. The house referred the consideration of this petition to the committee, with instructions to hear the matter thereof, at the same time with that of Mr. *Henley*'s petition.—21 Journ. 33. 35. 58. 68.

(b) *Bridgewater*, 10 and 18 November, 1768, a petition from the mayor, aldermen, and capital burgesses was presented, setting forth

that the right of election was in them only, and complaining that at the last election, the then mayor being returning officer, admitted a number of persons to vote, under colour of their being inhabitants, paying scot and lot.—21st Nov., a petition of one of the aldermen, with some of the capital burgesses, taking notice of the above petition, alleged the right of election to be in the inhabitants paying scot and lot, and praying to be heard thereto by their counsel, was presented, and the house ordered that it should be heard at the same time with that of the petitioning candidates. And all these parties were heard accordingly on the 9th March, 1769. 32 Journ. 28. 44. 48. 301.

(c) See *post*, 70.

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38 Journ. 172.
Petition of
elector pray-
ing to be heard
by counsel
against the
petition of an
unsuccessful
candidate not
received.

Thus, in the case of *Worcester*, 2d February, 1781 (a), where a petition was offered to be presented by one of the aldermen (who it is to be presumed was an elector), complaining of the allegations of a petition presented by an unsuccessful candidate, and praying to be heard by counsel before the select committee; the house rejected it.

40 Journ. 13.
S. C. 1 vol. 712.
Where there
was a return

And in the case of *Westminster*, 25th May, 1784 (b), (which was before the act of 25 Geo. 3.

(a) A petition of *William Mathers*, one of the aldermen of the city of *Worcester*, was offered to be presented, complaining of the allegations contained in the petition of *Sir Watkin Lewes*, knight, (which had been presented to the house upon the 20th Nov. then last) complaining of an undue election and return for the city of *Worcester*, and desiring to be heard by his counsel before the committee, to be appointed for taking the said petition of *Sir W. L.* into consideration. A motion being made that *Mr. Mathers'* petition be brought up, and the question being put, it passed in the negative.

(b) The petition of the Right Hon. *Charles James Fox* complained of a return made by the high bailiff of *Westminster*, in which he stated that there were three candidates at the election;

that he took the poll for six hours, daily, from the 1st of April, to the 17th of May; that at the final close of the poll the numbers stood thus: for Lord *Hood*, 6694; for *Mr. Fox*, 6233; for *Sir Cecil Wray*, 5998: that a scrutiny was demanded on behalf of *Sir Cecil Wray*, which was granted, and that the said scrutiny was then pending and undetermined, and that he humbly conceived that he could not make any other or further return, until the said scrutiny should be determined, which he stated that he fully intended to proceed upon with all practicable dispatch. The petitioner prayed the house, to order the high bailiff to execute an indenture, returning the petitioner. The house, after reading the statutes 10 G. 3. c. 16. and 11 G. 3. c. 42. determined that the said petition did not come within

c. 84). where Mr. *Fox* petitioned the house, stating the special return made by the high bailiff, in which he, the high bailiff, set forth the proceedings which had taken place as to the election, and that a scrutiny was then pending, and praying that the house would direct him to execute an indenture of return of the petitioner, together with Lord *Hood*, they having had the majority of numbers at the close of the poll; the house, having referred to the acts of parliament, at first considered that the petition did not come within the description of a petition complaining of an undue election or return, the proceedings upon which are regulated by the acts of the 10 and 11 Geo. 3. and ordered it to be withdrawn, acting upon the notion that those

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of a scrutiny pending the house at first refused to receive a petition complaining of the return.

the description of a petition complaining of an undue election or return of a member to serve in parliament, the proceedings upon which are regulated by the two acts referred to, and ordered it to be withdrawn. 40 Journ. 13. The proceedings in this case were frequently brought before the house. And on the 3d March, 1785, it was resolved, "That it appearing to this house, that *Thomas Corbett*, Esq. high bailiff of the city of *Westminster*, having received a precept from the sheriff of *Middlesex* for electing two citizens to serve in parliament for the said city,

had taken and finally closed the poll on the 17th day of May last, being the next before the day of return of the said writ, he be now directed forthwith to make return of his precept of members chosen in pursuance thereof." 40 Journ. 577.—On the 4th March, the high bailiff made a return of Lord *Hood* and Mr. *Fox*, according to the numbers standing on the poll as reduced by the scrutiny on the 3d of March, 1785, which return was ordered by the house to be annexed to the writ. 40 Journ. 588, 589.—See more of the proceedings in this case, 1 vol. 712, (n.)

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40 Journ. 22.
Such petition
afterwards re-
ceived (before
25 G. 3. c. 84.)
Ib. 41.

statutes precluded the house from entering upon the subject.—The petition, however, was presented again on the same day, and it was then ordered that it should be heard at the bar of the house, and counsel were heard accordingly, on the 28th of May, 1784.

Since this case, however, the stat. 25 Geo. 3. c. 84. has extended the jurisdiction of select committees to cases where there is no return or an insufficient return.

40 Journ. 99.
It seems, a pe-
tition from
electors in fa-
vour of the re-
turn of the sit-
ting member,
would not be
received.

Bedfordshire, 7th June, 1784.—A petition of certain freeholders, stating that the names of certain persons, electors, who in fact had given their votes for the Earl of *Upper Ossory* and the Hon. *St. Andrew St. John*, two of the candidates, were by mistake taken down on the poll as having voted for Lord *Ongley*, and stating other matters in favour of the return of Mr. *St. John*, one of the sitting members, was offered to be presented. This occasioned some debate in the house, and, thereupon, it was not persisted in (a).

(a) The entry in the Journal runs thus: “A doubt arising in the house, whether the said petition of the said freeholders not complaining of an undue election or return, ought to be received by the house, without a question being first put for the bringing up the same, or ought to be referred to the consideration of the committee to be appointed to try and determine the merits of the said Lord *Ongley*’s petition, under the provisions of

Colchester, 16th January, 1789, a petition of certain freemen, stating that the returning officer had made a return that there was an equal number of votes for Mr. *Jackson* and Mr. *Tierney*, and that Mr. *Tierney* ought to have been returned, and, therefore, praying for leave to petition, complaining of the return, was offered to be presented. The matter was debated, and the debate having been adjourned till the 19th of January, the motion was on that day withdrawn by leave of the house.

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44 Journ. 87, 88.

It seems that a petition from electors alleging that one of the candidates returned upon a double return, ought to have been returned singly, will not be received.

Bodmin, 14th Dec. 1790.—The petition of *George Hunt*, Esq. an elector of *Bodmin*, stated that Mr. *Hext*, the mayor, had held an election, and had made a return of Sir *John Morshead* and *Roger Wilbraham*, Esq., against which certain petitions had been presented; that *Robert Edyvean*, the senior capital burgess, and counsellor of the borough, and as such claiming to be returning officer, had held another election, and had rejected the votes of the petitioner, and of eight others; that he had declared Sir *James Larroche* and *John Sullivan*, Esqrs. to be duly elected but had made no return of them; and that an information in the nature of *quo warranto* had been

46 Journ. 62, 63.

See also, 2 Fra. 237

Where an election had been holden by the mayor, and he had made a return, against which petitions had been presented stating that an election had also been holden by a capital burgess, who claimed to be returning officer, but who had made no return, and that an information in

the act" (of 10 Geo. 3. c. 16.) The several entries in the case of *Bridgewater*, 1768 and 1769, were read. "And

the offering of the said petition, &c. was not persisted in." See also 1 Lud. 326.

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the nature of
quo warranto
had been filed
against such
mayor, a pe-
tition from an
elector, against
the claim of
the burgess
(who had re-
fused his vote)
was rejected
by the house.

filed against *Hext*. The petitioner, fearing that if the select committee should be of opinion that *Edyvean* was the returning officer, his franchise would be lost, by the rejection of his vote by *Edyvean*, prayed the house to take his case into consideration, and to afford him such relief as they might see fit. The house, on reading the statutes 10 Geo. 3. c. 16. 25 Geo. 3. c. 84. and 28 Geo. 3. c. 52. determined, that this petition did not come within the provisions of any of them; and the same was not delivered in at the table. The motion that it should be brought up was negatived (a).

58 Journ. 63.

A petition of electors, stating that an unsuccessful candidate, who had petitioned, had not the legal majority; that he was disqualified; that he had been guilty of bribery and treating, &c.; and that he was therefore

Middlesex, 7th December, 1802.—A petition of several freeholders of the county of *Middlesex* was read, stating, *firstly*, the names of the three candidates at the election; and the return of Sir *F. Burdett* and *G. Byng*, Esq.; *secondly*, that *Wm. Mainwaring*, Esq. the unsuccessful candidate, had petitioned against the return of Sir *F. Burdett*; *thirdly*, that Mr. *Mainwaring* had not the legal majority of votes; that he was

(a) *Canterbury*. There was a petition of certain electors, (*John Bunyer*, and others) against the pretensions of Mr. *Gipps*, and Sir *John Honeywood*, in whose favour certain other electors petitioned. One of the objec-

tions made was, that this petition did not come within the statutes. The committee refused to hear the petition, but it was upon another ground. *Clifford*, 357. 363. and *post*, 115.

disqualified, both in respect of estate, and of his holding certain offices; that he had been guilty of bribery and treating, of using undue influence, of threatening the voters for Sir *F. Burdett*; of endeavouring to overawe the returning officer; of procuring paupers to swear themselves possessed of tenements to the value of forty shillings a year, and of endeavouring to procure a majority of votes by various other unjust, illegal, and unconstitutional means; that the petitioners were ready and willing to prove the premises aforesaid: and the petitioners further stated, “that they conceived that Mr. *Mainwaring* was not competent to claim the return in the manner in his petition mentioned, or to proceed upon the same against the said Sir *F. Burdett*, until he, Mr. *Mainwaring*, had cleared himself from the several charges aforesaid; and, therefore, prayed relief against the pretensions of Mr. *Mainwaring* to be one of the representatives for the county aforesaid.”

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incompetent to claim the return, and praying relief against his pretensions, was rejected.

“A motion was made, and the question being proposed, that the said question be taken into consideration, upon Tuesday, the 12th day of April, then next; at the same time that the petition of *W. Mainwaring*, Esq. is ordered to be taking into consideration:

“And a doubt arising, whether the matter of

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the said petition was within the provisions of any of the acts passed for the regulation of the trials of controverted elections or returns of members to serve in parliament ;

“ A motion was made, and the question was proposed, that the said petition does not come within the description of a petition, the proceedings upon which are regulated by any of the said acts.

58 Journ. 87.

“ A debate arose upon this motion, which was adjourned to the 13th December, on which day the question was fully discussed (*a*) ; after which the question was put and carried without a division, that the petition should be withdrawn.”

The result of these several cases is, that the house will not receive petitions from electors, merely levelled against the pretensions of a petitioning candidate (*b*) ; or, in favour of the

(*a*) See the very luminous arguments on opposite sides of this question, by Mr. Tierney, and the late Master of the Rolls (Sir *Wm. Grant*), 1 Peckw. Introd. xxii.

(*b*) It seems that such charges in a petition will not be a ground for not entering upon the petition in respect of other charges. In the case of *Caermarthenshire*,

1803, the petition of Mr. *Mansell Philipps*, an elector, contained charges of bribery and treating not only against the sitting member but against the petitioning candidate, and that petition was heard. 1 Peck. 286. There were also petitions framed in the same way in the case of *Ilchester*, 2 Peck. 237, 238, 239.

right of the sitting member; or, alleging that one of two candidates returned upon a double return should have been returned singly; or, in support of the title of the person who had acted as returning officer, and in opposition to the claim of another who disputed that title; or, alleging that a petitioning candidate was disqualified, and that he had been guilty of bribery and treating.

Nevertheless it will appear that although the house does not receive such petitions, no injustice is effected by such refusal, inasmuch as it is competent to the committee, when upon the trial of a petition, to entertain any objection to a petitioner, without any such petition.

SECTION 3. *Scotland.*

THE jurisdiction of select committees having been established subsequently to the union, the acts herein-before mentioned operate equally with regard to elections in *Scotland*.

SECTION 4. *Ireland.*

THE legislature in *Ireland* had created a ju-

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jurisdiction analogous to that in *England* for the trial of controverted elections, which depended upon several acts of parliament, introduced soon after the corresponding statutes in *Great Britain*.

App. cccxxxviii.

Moreover, upon the union with *Ireland*, the stat. 42 Geo. 3. c. 106. provided that all the rules, regulations, authorities, and powers given or prescribed by any act or acts of the parliament of *Great Britain*, in force at the time of passing the act of union with respect to petitions complaining of undue elections, or returns of members to serve in parliament, or complaining of the omission or insufficiency of any such return, and with respect to petitions of persons desiring to oppose any right of election, or of appointing returning officers, which shall have been deemed valid by the determination of any select committee, and with respect to the trial and determination of all such petitions by such select committees, should be in force, with respect to all future petitions, complaining of undue elections or returns of members for places in any part of the united kingdom, or of the omission or insufficiency of returns, or from any person or persons desirous to oppose any such right of election, or of appointing returning officers.

CHAPTER II.

OF ELECTION PETITIONS.

SECTION 1. *Of the nature of election petitions, as founded upon or regulated by the statutes.*

SECTION 2. *Of the time within which election petitions must be presented.*

SECTION 3. *Who may be petitioners in election petitions.*

SECTION 4. *Of objections to petitioners in election petitions appearing upon the face of the petitions.*

SECTION 5. *Of objections to petitioners in election petitions not appearing upon the face of the petitions.*

SECTION 6. *Of the form of election petitions, and the degree of minuteness required in the allegations therein.*

SECTION 7. *Of supplemental election petitions.*

SECTION 8. *Of renewing election petitions.*

SECTION 9. *Of withdrawing election petitions.*

SECTION 10. *Scotland.*

SECTION 11. *Ireland.*

THE several acts of parliament (*a*) which have been pointed out in the preceding chapter

(*a*) It may be proper, before trial of controverted elections, we go into detail upon the to mention that, if a person

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together form the existing code of laws for the trial of controverted elections, in the application

be returned for two or more places, he is to make his option; but Lord *Glenbervie* remarks that it is improper that a person so returned should in any instance make his option *before the fortnight for petitioning* is expired, because till then, either of his elections may be complained of. See the observations, 3 Doug. Pref. xii. The authority for this proposition may be found in the following case of Sir *James Lowther*; although that was a renewed petition, the same principle would apply. Nor after the fortnight, if there is a petition against his election for either of the places, can he make his election for one of them, till the merits of the election complained of are decided. *Ib.* where see the reasons of these rules.

By the effect of the standing order of the house, repeated at the commencement of every session, this election is to be made within one week after the expiration of the fourteen days limited for presenting petitions, provided there be no question upon the return for that place. *App.* DCXIV.

Where a person is returned for two places, and a petition is presented in respect of one of them, and that petition is not tried dur-

ing the first session, the petitioners have a fortnight at the beginning of the next to renew their petition. In such case, although the member should make his election to serve for the place where his right is not disputed, yet the house will not order a warrant for a new writ to fill the seat he may have declined till the expiration of the fortnight; unless perhaps the former petitioners were themselves to inform the house that they do not intend to renew their petition.

Westmoreland, 17th Dec. 1774. Several freeholders petitioned against the election of Sir *James Lowther*. The petition was not tried in that session. On the 7th Nov. 1775, the speaker acquainted the house that he had received a letter from Sir *J. L.* who was prevented by illness from attending his duty in the house, to inform him that (having received information from the several persons who were the petitioners in the then last session of parliament that they would not renew their petition), he being chosen for the county of *Cumberland*, and also for that of *Westmoreland*, made his election to serve for the former. There was no immediate information from the petitioners themselves, which

and construction of which, an infinity of questions has arisen. It is now proposed to explain more fully the enactments of these statutes, and to advert to the decisions which have taken place upon them; such decisions, though not positively binding, being something like landmarks of the law; and, if not affording what is technically termed precedent, at least shewing what has been deliberately done in cases which have come under consideration.

As the rules applying to the different petitions which are founded upon, or regulated by the election statutes, are in some instances general, and in others particular, it will be convenient, in order to avoid repetition, to divide them into certain classes, and, instead of describing in each instance the nature of the petition intended to be referred to, to speak of it, as of a petition of one of the enumerated classes.

For this purpose, the subjects of these petitions have been arranged, according to the nature of them, into *five* different classes; under

it was thought there should have been. A motion was then made for a new writ for *Westmoreland* in his room. But the house having had the original petition read, it was ne-

gated. On the 13th Nov. the fortnight being expired and no renewed petition presented, the new writ was ordered. 35 Journ. 49. 425. 440.

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one or other of which the matter relating to controverted elections will for the most part fall.

Where however this is not exactly the case, the relevant matter so connected with this subject as to make it proper to be introduced, will be mentioned wherever it shall seem most applicable.

These *five* classes are as follow, and it will be necessary to keep them in view.

First class of petitions.

1. The petitions which belong to the *first* class, are those wherein it is complained that there has been an undue election (*a*) or return (*b*): that is, where it is insisted that the

(*a*) In order to swell the *Appendix* as little as possible, a certain number only of the most useful forms of petitions have been selected. These will in general afford a sufficient ground-work for others. It may however be useful to point out instances of petitions of the different classes.

For a petition complaining of an undue election, upon the ground that the returning officer had not given the notice of election within the statutable hours, *Cirencester*, 20th Oct. 1796. 52 Journ. 45.

(*b*) For a petition of a

candidate complaining of an undue return, with allegations of the improper admission of some persons to their freedom, and of the rejection of others; of the improper admission and rejection of votes; of partiality in the returning officer, and of a premature close of the poll; of bribery and treating in the sitting member, and claiming a right to have been returned, See *App.* cccclxi.

For a petition against an election and return, in case a petition of appeal should be decided in favour of the appellant, 4 *Liskeard*, 2 *Peck*. 334.

person elected has not been regularly chosen, or that the person returned was so returned in the room of some other who was legally intitled.

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(See stat. 10
Geo. 3. c. 16.
§ 1.)

2. The petitions which belong to the *second* class, are those wherein it is complained, that the return was not made before the day on which the writ was returnable; or not within fifty-two days after the date of the writ (in cases of vacancies); that there has been no return at all; or, an insufficient return, comprising, amongst others, double returns (*a*) and special returns (*b*), as being not according to the requisition of the writ or precept.

Second class
of petitions.

(See stats. 25
Geo. 3. c. 84.
§ 10.
28 Geo. 3. c. 52.
§ 1.)

3. The petitions which belong to the *third* class, are those wherein application is made to be admitted party in the room of a member whose election or return is petitioned against; or, who is returned upon a double return; and who before the consideration of the petition dies (*c*), becomes a peer, vacates his

Third class of
petitions.

(See stat. 28
Geo. 3. c. 52.
§ 2, 3, 4.)

See a petition of a candidate, containing charges of bribery and treating against the sitting member, &c. and alleging that he and another candidate who does not petition ought to have been returned, *Ilchester*, 1803. 1 Peck. 303, and 58 Journ. 29. 29th November, 1802.

(*a*) For a petition upon a double return, see *App.* cccclxix.

(*b*) For a petition of electors upon a special return that no election could be made on account of riots, *Knaresborough*, 24th January, 1805. 60 Journ. 14.

(*c*) For such a petition, See *Ludgershall*, 16th Feb. 1791. 46 Journ. 184.—Upon petitions for this purpose the house makes an order that the petitioner should be admitted a party, *Ib.* See the

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seat (*a*), or declares an intention of not defending the election or return (*b*).

Fourth class of petitions.

(See stat. 28
Geo. 3. c. 52.
§ 25, 26, 27, 28.
30, 31, 32.)

4. The petitions which belong to the *fourth* class, are those wherein application is made to be admitted party or parties to oppose a right of election (*c*), or a right of appointing a returning officer or officers (*d*), which has been determined by a select committee, and reported upon to the house.

Fifth class of petitions.

(See stat. 28
Geo. 3. c. 52.
§ 29.)

5. The petitions which belong to the *fifth* class, are those wherein application is made to be admitted party or parties, to defend a right of election, or a right of appointing a returning officer, or officers, which has been determined upon by a select committee, and reported upon to the house (*e*).

Petitions not coming under the above classes, but occasioned by election petitions.

Although all petitions which are strictly in the nature of election petitions are comprised in these classes, the proceedings in respect of such occasionally give rise to others of a different

case of *East Retford*, Glanv. 128, 130, where it was held, that misdemeanors, in respect of the election of a person elected, but since deceased, were examinable notwithstanding his death.

(*a*) Such a petition would, *mutatis mutandis*, be similar to that last referred to.

(*b*) For such a petition, See *App. ccclxxxiii*.

(*c*) For such a petition, See *App. cccclxxxv*.

(*d*) Such a petition would, *mutatis mutandis*, be similar to that last referred to.

(*e*) For such a petition, See *Liskeard*, 3 March, 1804. 59 Journ. 132.

nature, which however are so far connected with them, as to make it improper to omit the mention of them.

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The petitions alluded to, are those of parties, whose conduct is impugned by the charges in an election petition; or, who being conscious of the omission of some election duty which the law casts upon them, may be desirous of accounting for it; or, who having made a statement in an election petition under an impression which turns out to have been unfounded, may wish to come forward and correct it.

The following petitions were presented upon such grounds.

Colchester, 17th Feb. 1789. Mr. *Angier*, being charged in Mr. *Tierney's* petition with partiality and misconduct at the election, as returning officer, presented a petition, praying thereby to be heard by his counsel before the select committee, against the several allegations of Mr. *Tierney* and Mr. *Jackson*, who had respectively petitioned, in consequence of an incomplete return. This course however seems to have been quite unnecessary, as Mr. *Angier* would have been entitled to be so heard without any peti-

44 Journ. 125.

1 Peck. xxvi.

504.

Petition by returning officer praying to be heard by counsel against allegations of petition impugning his conduct.

See ante, vol. 1. 804.

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tion (a), it being the just and uniform practice of select committees to permit returning officers, whose conduct is directly complained of in the petition, or even if, from the nature of the petition, it may come in question (b), so to appear. The petition was ordered to lie on the table.

53 Journ. 116.
128. 148. 149.
Petition by returning officer, stating his omission to make proclamation for the election, and that he had given a defective notice, and praying that a new writ might issue.

Tewkesbury, 23d, 25th, and 27th Nov. 1797.

(Where there (c) was a special return, which amounted to a return that no due election had been made), the bailiffs petitioned the house, stating that from inadvertence, they had made no proclamation, and had given notice of the election at the wrong hour; that in consequence of this defect they were apprehensive that they could not legally hold the election under the precept issued; and praying that a new writ might be ordered. The petition was ordered to lie on the table, and the prayer was ultimately complied with.

(a) See the cases of *Milborne Port*, Philips, 220. *Cricklade*, 2 Lud. 323. *Horsham*, 2 Fras. 1. *Steyning*, 2 Fras. 395. *Nottingham*, 1 Peck. 77. *Liskeard*, 1 Peck. 110. *Tewkesbury*, 1 Peck. 146. *Caermarthenshire*, 1 Peck. 286. *East Grinstead*, 1 Peck. 307. *Middlesex*, 2 Peck. 1. *London*, 2 Peck. 268. *Liskeard*, 2 Peck. 324. *Middlesex*, 2 Peck. 338. *Rochester*, Roe, App. cccclii.

(b) *Knaresborough*, 2 Peck. 382.

(c) Nov. 25th, 1797. A special return was made, stating the same facts, and that by reason thereof no election or return of a burgess had been made. Nov. 27th. This return was brought into the house, on which day an order was made, that all persons who would question the return, should question the same

Nottingham, 1803. A petition was presented (*a*), signed by certain electors, who had signed a former one, stating that they had learnt with extreme regret, that their names were affixed to a petition containing certain allegations (such as were therein mentioned) against the magistrates of the town; that they disclaimed all such allegations, having been informed, at the time that they were solicited to subscribe their names, that they were only called upon to declare that their intention was to have voted for Mr. *Coke*, and praying such relief as to the house should seem meet (*b*). The petition was ordered to lie on the table (*c*).

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58 Journ. 22.

401. 456.

1 Peck. 77. 79.

87.

Petition by electors stating they had been imposed upon when they signed a former petition, and disclaiming certain allegations therein.

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within 14 days next after the return was brought into the office of the clerk of the crown. December 13th, no petition having been presented in the interval, a new writ was ordered. 53 Journ. 128. 148, 149.

(*a*) This petition was presented on the 8th December, 1802.

(*b*) *Honiton*, 1st and 3d March, and 9th June, 1785, and 27th January, 1786.— Upon the renewal of a petition, some of those electors who had signed the petition petitioned to withdraw their names. 40 Journ. 85. 98. 527. 550. 575. 881. 886. 3 Lud. 143. See *post*, Sect. 8.

(*c*) One of the resolutions of the select committee was, That it appeared to the committee, “that Alderman *Foxcroft* (who had been employed to procure signatures to one of the petitions) stated to those who signed the petition that it was a petition for those who would have voted for Mr. *Coke*, but he admitted that the major part of them were not acquainted with the allegations against the magistrates and sheriff, (the petition containing such) and that about 16 of those who signed the petition were, to his knowledge, not in *Nottingham* at the time of the election.” 1 Peck. 87.

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Petitions of
1st and 2d
classes to be
presented
within 14 days
after the
making of the
order of the
house.

38 Journ. 330,
et post.

SECTION 2. *Of the time within which election petitions must be presented (a).*

1. 2. WITH respect to petitions of the *first* and *second* classes: (*b*)

By the effect of an order of the house, renewed at the commencement of every session (*c*), a petition complaining of the return of any mem-

(*a*) As to the time for presenting renewed petitions, see *post.* sect. 8.

(*b*) For these classes, see *ante*, 82, 83.

(*c*) For this order, see *App.* DCXIV.

Lord *Glenbervie* observes, that the first order which appears in the Journals, for limiting the time for questioning elections to a fortnight, was made in the first parliament of Car. 1. 18th Feb. 1625. (See 1 Journ. 821.) And that from the beginning of the long parliament in 1640, it was continued every new session till the 18th Feb. 1707, when it was made a standing order, viz. "That all petitions upon every new parliament, relating to elections and returns, be delivered to the clerk of the house, and be laid by him upon the table before the speaker be chosen." (See 15 Journ. 550.) This order was re-

newed at the commencement of the next session on the 22d Nov. 1708. 16 Journ. 7.

The limitation of the fortnight was continued as to elections on vacancies during the continuance of a parliament. The above resolution of 18th Feb. 1707, was not afterwards renewed, but it continued a standing order, and was adhered to till 1722, when a committee was appointed 31st Oct. to consider of that order. 20 Journ. 50. And in consequence of their report, on the 21st Nov. 1722, it was discharged from being one of the standing orders of the house. *Ibid.* 61. Since that time the limitation after a general election has always been a fortnight, as well as after elections on an intermediate vacancy. See also Lord *Glenbervie's* note to the Introduction, 1 Doug. 81. (N.)

ber must be presented within fourteen days after the making of such order, and so, within the same period after any new return shall be brought in.

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class.

It appears from the case of *Helstone*, 2d April, 1781, and of *Downton*, 16th August, 1784, and *Flintshire*, 5th December, 1796, that in the computation of the fourteen days, if the day on which the return is made into the crown office be included, that on which the petition is presented is to be excluded (*a*), or *vice versa* (*b*).

38 Journ. 330.
and *post*, 92.
40 Journ. 445,
and *post*, 93.
52 Journ. 150.
151. and *post*,
93.
There must be
thirteen whole
days between
days of return
and of present-
ing petition.

When the house is sitting, the above limitation is very strictly insisted upon (*c*).

The limitation
of time for pre-
senting peti-
tions strictly
adhered to if
the house is
sitting.
35 Journ. 59.
62.

In the case of *Elgin*, 20th and 23d Dec. 1774 (*d*), which will be presently mentioned,

(*a*) It has been decided in the Court of King's Bench, that where the computation of time is to be made from an act done (*here it would be from the making the order*), the day on which the act is done is to be included in the reckoning. Thus when the law requires that a month's notice of an action should be given, the month begins with the day on which the notice is served. *Castle v. Burdett*. 3. T. R. 623. And where the statute (21 Jac. 1. c. 19. § 2.) enacts that a trader, lying in prison two months (i. e. lunar months) after an arrest

for debt, shall be adjudged a bankrupt, that includes the day of the arrest. *Glassington v. Rawlins*. 3 E. R. 407. See also the cases as to computation of time, 1 vol. 504.

(*b*) It is to be presumed that the rule would be analogous in the other case where the time begins to run from the making the order.

(*c*) The time of making the return is made appear to the house by a certificate from the clerk of the crown, stating the day on which it was received in his office.

(*d*) See *post*. Sect. 10.

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1st and 2d
class.

where a petition was lodged with the clerk of the house, after the rising of the house on the day on which the fortnight expired, though there were very peculiar circumstances in the case, the house determined that it should not be received.

38 Journ. 163.

Where petition was not presented on the first day of the meeting of the house after a recess, though the delay was accounted for, the house refused to receive it.

So in that of *Seaford*, 1st February 1781, where the fourteen days expired during a recess of parliament, and Mr. *Molesworth* had neglected to present his petition on the day on which the house met after the adjournment, he offered to present it on the day after its meeting, alleging that it had been intended that it should be presented together with the petition of certain electors in his interest, which latter had been hindered from being presented by an unforeseen and inevitable accident (*a*), occasioned by an

(*a*) Mr. *Molesworth*'s petition stated (*inter alia*) that he had prepared a petition which was ready to be presented on the first day of the meeting of the house after the late recess; that sundry electors had prepared and signed a petition similar in matter of complaint with that of the petitioner, which would have been presented but for the casualty thereafter mentioned; that the agent for the petitioner as well as the complaining electors lived at *Lewes*, ten miles from *Seaford*; that he being in *London* sent

down a petition on *Saturday* 20th January, to his clerk at *Lewes*, with directions to him to go early on the *Monday* morning to *Seaford* and get it signed, and to send it back to him in *London* by a messenger on the *Monday* evening or early on the *Tuesday* morning; that the said clerk went to *Seaford* on the said *Monday* morning and got it signed, and then went on 8 miles further to *Eastbourne*, thinking to have been at *Lewes* about four in the afternoon, but that such a snow as had not been known in

extraordinary severity of the weather, the circumstances of which were particularly set forth; the house refused to receive the petition.

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class.

It occasionally happens, that the house is not sitting either at all during the time limited for presenting petitions, or not up to the end of that time. In either of these cases, however, the petition may be presented on the first sitting day after the expiration of the fortnight. This has been allowed of in several instances.

Cases where
the house is not
sitting at the
expiration of
the fourteen
days.

Northampton, 24th March, 1662.—The petition was not delivered in within the limited

8 Journ. 394.
Formerly
a petition not
delivered in
proper time, by
reason of the
adjournment of
committee,
was permitted
to be received
on their
meeting.

the memory of man came on, which not only covered the earth in the space of an hour to a depth that would have rendered it almost impossible to travel, but so filled the hemisphere as to render it altogether impossible to do so; for that it so thickened the air, that a man sitting on horseback could not discern his horse's head, and therefore he could not get back to *Lewes* that night, but remained at *Eastbourne*; and the next morning as soon as it was light set out with a guide, and after being buried with his horse many times in the snow, and at the most imminent hazard of his life, reached *Lewes*, but not till

eight in the evening, though the distance was only 18 miles; that through this delay and that which was further occasioned by the difficulty of travelling through the snow from *Lewes* to *London*, the petition did not reach *London* till the *Wednesday* night after the house was risen; that the petition was mentioned in the house on the *Thursday*, and would have been presented that day, had not the speaker said he apprehended it would be contrary to the rules of the house to receive it, but that he would take the sense of the house upon it, if desired by the petitioner. 38 Journ. 163.

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class.

time, by reason of the adjournment of the committee (it being then the practice to present petitions directly to the committee of elections). The petition was presented on the day of the meeting of the committee, and it was received.

25 Journ. 474.

Where return made five days before an adjournment of house, petition presented on the day of meeting after adjournment holden to be in time.

29 Journ. 105.

So where return was made during an adjournment.

Shaftesbury, 11th January, 1747.—The return was delivered into the crown office on the 14th December; and the house adjourned from the 19th December till the 11th January.—*Durham*, 19th January, 1762. The return was made on the 26th December, during an adjournment of the house, viz. from the 23d December to the 19th January. In both these cases, petitions presented on the first day of the meeting of the house were received.

To the same effect were the following cases.

36 Journ. 326.
Same point.

Newcastle-upon-Tyne, 8th April 1777. The return was made on the 17th March, and the house adjourned from the 27th March to the 8th April, when the petition being offered to be presented was received, “the same not being presented in due time because of the last adjournment of the house.”

38 Journ. 330.
Where house adjourned before the expiration of the

Helstone, 2d April 1781. The return was brought into the crown office on the 16th March,

and the house did not sit for business from the 29th March until the 2d April; when the petition was received, "the same not being presented in due time, because the house had not proceeded upon business since *Thursday* then last (the 29th March) until that day."

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class.

fourteen days,
petition was
received on the
first day of
meeting after-
wards.

Downton, 16th August, 1784.—The return was delivered into the crown office on the 31st July; the house did not proceed upon business from the 13th till the 16th August. The petition was received on the latter day.

40 Journ. 445.
Same point.

Flintshire, 5th December 1796.—Two petitions, one by certain electors, and the other by the unsuccessful candidate, were offered to be presented to the house. The return was delivered into the crown office on the 19th November. The house did not proceed upon business from the 2d till the 5th December. The petition was received on the latter day.

52 Journ. 150.
151.
Same point.

Liskeard, 5th April, 1804.—A petition was received after the expiration of the fortnight under similar circumstances.

59 Journ. 195.
Same point.

The entry in the Journals in each of these three last cases, was similar to that of *Helstone* just mentioned.

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Petitions of
1st and 2d
class.

It seems, it
should be
stated to the
house that the
petition was
delayed only
by the adjourn-
ment of the
house.

In cases of
amended re-
turns, the same
time usually
allowed for
petitioning as
upon original
returns.

1 Doug. 153.
35 Journ. 84.
1 Lud. 398.
52 Journ. 571,
et passim.

In such cases an entry has also been usually made, that “the house had been informed, that the petitioners would have petitioned within a fortnight if it had not been for the adjournment of the house,” or to the like effect. Hence it seems proper that such a statement should be made to the house.

In cases where the return is amended by the substitution of the name of a person, whom a committee decide to have been intitled to the return, it is usually ordered by the house, that all persons claiming to have a right of voting at elections for the place in question shall be at liberty to petition the house touching the election within fourteen days next, if they think fit; as in the cases of *Morpeth*, 27th Jan., 9th Feb., 31st Oct., and 23d Nov., 1775. *Bedfordshire*, 2d July, 1784 (a), and *Canterbury*, 12th May, 1797.

Or, that the party whose name has been erased out of the return, and the electors, shall have the like liberty to petition the house, in order to question the election of the person whose name has been so inserted in the return; as in the case of *Middlesex*, 6th March, 1805.

60 Journ. 121,
et passim.

(a) The question in these cases related solely to the re-
turn.

So, where a name is amended in a return, Sect. 2.
 there having been a mistake in it, the house Petitions of
 will give the electors the same time to petition 1st and 2d
 against the election and return, 17th Dec. 1790. class.
Newton, 26th May, 1802 (a). 46 Journ. 126.
Journ.

3. With respect to petitions of the *thrd*
 class (b).

The stat. 28 Geo. 3. c. 52. § 2. (c) directs that As to petitions
 if at any time, before the day appointed for of 3d class.
 taking any such petition into consideration, the
 speaker shall be informed, by a certificate in
 writing, subscribed by two members of the house
 of commons, of the death of a person petitioned
 against (whether returned singly or upon a
 double return), or that such person is summoned
 to parliament as a peer of *Great Britain*; or, if
 the house shall have resolved that his seat is by
 law become vacant; or, if the house shall be in-
 formed by a declaration in writing, subscribed
 by such member, and delivered in at the table
 of the house, that it is not the intention of such
 member to defend his election or return; notice
 is in every such case to be immediately sent by
 the speaker to the sheriff, or other returning Speaker being
to give notice
to returning
officer.

(a) See the case of *Sutherland*, 15th December, 1790. Sect. 10. *Tralee*, post, Sect.
11.

46 Journ. 87, *post*, Sect. 10. (b) For this class, see *ante*,
83.

Lanarkshire, 17th December, 1790. 46 Journ. 126, *et post*, (c) For this stat. see *ante*,
23.

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Petitions of
3d class.

officer of the place, to which such petition shall relate, and he is thereupon to cause a true copy of the same to be affixed on the doors of the county-hall or town-hall, or of the parish church nearest the place where such election has usually been holden.

And to have
notice inserted
in one of the
two next *Lon-*
don Gazettes.

The same clause directed that such notice should also be inserted in the next *London Gazette*, but the stat. 53 Geo. 3. c. 71. § 17. (a) after reciting that such direction cannot in many cases be complied with, enacts that in all cases where any such notice is directed to be published in the next *London Gazette*, it shall be sufficient if it is published in one of the two next *London Gazettes*.

Petition to be
presented
within thirty
days after
such notice
gazetted ;

And by the stat. 28 Geo. 3. c. 52. § 3. (b) (together with the latter act as far as the provision last-mentioned) such petition may be presented at any time within thirty days after the day on which such notice shall have been so inserted.

Quære,
Whether
where the
house does not
sit within the
thirty days, the
petition can be
received at all?

The time for presenting a petition in this class of cases, being limited, not by an order of the house, but by an act of parliament, it should seem that there is no discretion in the house as to receiving a petition after the expiration of

(a) For this stat. see *ante*,
62.

(b) For this stat. see *ante*,
24.

that time; and it is very doubtful whether it could be deemed sufficient, by a liberal construction of the statute, that if the house should not sit within the thirty days, the petition should be left with the proper officer of the house (*a*).

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Petitions of
3d class.

4. With respect to petitions of the *fourth* class (*b*):

The time for presenting such petitions was limited by the stat. 28 Geo. 3. c. 52. § 26. (*c*) to twelve calendar months, or fourteen days after the commencement of the next session after that in which the determination as to the right had been reported to the house; but the stat. 53 Geo. 3. c. 71. § 15. (*d*) after reciting that the allowing so much time had been found to be inconvenient and unnecessary, restricts the time to six months (*e*) next after the day on which such report shall have been made to the house.

Petitions of
the 4th class,
to be presented
within six
months after
the report to
the house, as to
right of elec-
tion or of ap-
pointing re-
turning officer
or officers.

(*a*) The cases where a petition has been received after the proper time is expired (*ante*, 91, *et seq.*) afford an inference that a petition can only be presented within the meaning of the standing order, (*App.* DCXIV.) while the house is sitting, otherwise there can be no necessity for making any statement to the house upon presenting it.

(*b*) For this class, see *ante*, 84.

(*c*) For this stat. see *ante*, 35.

(*d*) For this stat. see *ante*, 60.

(*e*) The latter act does not specify whether the six months are to be lunar or calendar months. Possibly this may admit of some question, though the safer way for the moving party would be to consider them as lunar.

The general rule is, that where the word *month* is used

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Petitions of
4th class.

If six months
end while there
is no parlia-
ment, or dur-
ing proroga-
tion or ad-
journment for
fourteen days,
then within
fourteen days
after next ses-
sion or meet-
ing of the
house.

And by the same clause, if such six months shall end, between the time when a parliament shall be dissolved, and the meeting of the next parliament; or during any recess by prorogation of parliament, or by adjournment of the house of commons for fourteen days intervening between the day of adjournment, and the day to which the house shall be adjourned, then within fourteen days after the first day of the next parliament, or of the next session, or of the next meeting of the house (a).

in a statute, without the addition of *calendar*, or any other words to shew that the legislature intended *calendar*, it is understood to mean a lunar month. *Lacon v. Hooper*. 6 T. R. 224.

In case a doubt can be raised from the word month being used in the two statutes *in pari materia*, and their being therefore to be taken together, it may be of use to advert to the rule in the following case of *Lang v. Gale*, H. T. 53 Geo. 3. *viz.*

The word "*month*," may mean lunar or calendar month, according to the intention of the contracting parties: therefore, where upon a sale of land on the 24th of January, it was agreed by the conditions of sale, that an abstract of the title should be delivered to the purchaser within a fortnight from the date thereof, to be

returned by him at the end of two months from the said date, and that a draft of the conveyance should be delivered within three months from the said date, to be re-delivered within four months from said date, and the purchase to be completed on the 24th of June, making a period of precisely five calendar months from the date of the sale and conditions, the word *months* was held to mean calendar and not lunar months, by reference to the whole period fixed for the completion of the contract. 1 Maule and Selwyn, 111.

(a) One case seems not to be provided for by this statute, that of the six months expiring during an adjournment for less than fourteen days. This would be analogous to the case touched upon in p. 96, as to petitions of the 3d class.

And by the stat. 28 Geo. 3. c. 52. § 27. (a) if Sect. 2.
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4th class.
no such petition shall be presented within the limited time, the judgment of the select committee on any such question is to be final and conclusive in all subsequent elections.

Where the right of election is once reported upon, the time of limitation begins to run immediately, and it matters not that there is a subsequent report by another select committee upon such right.

Malmsbury, 24th April, and 27th June, 1798. 52 Journ. 102.
A select committee had made a report of the 53 Journ 659.
right of election on the 27th November, 1796, 1 Peck. xxviii.
and another select committee having been ap- 2 Peck. 397.
pointed in 1797, to try the merits of a new If right of
election, also made a report upon the right of election, &c. be
election, on the 10th of May, in that year.—On once reported
the 24th of April, 1798, a petition was presented upon, the time
against the right reported by the committee in of appeal
1797, which was ordered to be taken into con- begins to run
sideration on the 11th of June; but on the 7th from such
of June, the following resolution was made: report; nor
“ That (it appearing to this house that no peti- can it make
tion having been presented to the house by any any difference
person or persons, praying to be admitted as a that the right
party or parties to oppose the right of election, was again re-
ported upon
within the
period of
appeal.

(a) For this stat. see *ante*, 36.

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Petitions of
4th class.

as determined by the select committee, and reported to the house upon the 27th day of November, in the last session of parliament, within the time limited by the act; and the judgment of the said committee, as to the said right of election, having thereupon become final and conclusive to all intents and purposes whatsoever) the said order for taking the said petition of the several persons, whose names are thereunto subscribed, on behalf of themselves and others, burgesses of the borough of *Malmsbury*, in the county of *Wilts*, into consideration on Monday next, be discharged."

5. With respect to petitions of the *fifth* class (*a*):

Petitions of the
5th class may
be presented
at any time
before day of
taking peti-
tion opposing
right into con-
sideration.

The stat. 28 Geo. 3. c. 52. § 29. (*b*) allows a petition praying to be admitted party or parties to defend the right determined and reported upon by a select committee, to be presented at any time before the day appointed for taking the petition in opposition to such right into consideration.

(*a*) For this class, see *ante*,
84.

(*b*) For this stat. see *ante*,
36.

Sect. 3.

SECTION 3. *Who may be petitioners in election petitions (a).*1. WITH respect to petitions of the *first* class (*b*):

Every petition complaining of an undue election or return must be subscribed by some person or persons claiming therein to have had a right to vote at the election to which the same relates: *Or*, by some person or persons claiming to have had a right to be returned as duly elected, or alledging himself or themselves to have been a candidate or candidates at such election: And by the stat. 28 Geo. 3. c. 52. § 1. (c) no such

Petitions of the 1st class.

Petitioner must claim as being an elector, or as having had a right to be returned, or as having been a candidate.

(a) It is always prudent in the case of a petition by a candidate, to have also a petition from electors, in case of any technical difficulty arising as to the one which perhaps may not apply to the other.

It is proper here to mention, that one consideration, which it has been important to attend to in petitions of electors, has ceased to be material. Doubts had existed as to the authority of select committees to examine persons who had subscribed the petition as witnesses touching the matters therein, and indeed in the case of *Ilchester*, (3 Doug. 165.) the inadmissibility of such a witness is

spoken of as agreed upon on all hands. These doubts are now removed by the stat. 53 Geo. 3. c. 71. § 19. (*ante*, 62, n.) and it is declared thereby that any person may be examined, although he shall have subscribed the petition, except it shall otherwise appear that he is an interested witness. This provision is general as to petitions of all classes. The mere circumstance therefore of being a petitioner is of itself no objection to the competency of a witness.

(b) For this class, see *ante*, 83.

(c) For this stat. see *ante*, 22.

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petition is to be proceeded upon, unless it be so subscribed (*a*).

Petitions of
2d class.

2. With respect to petitions of the *second* class (*b*):

Petitioner
must claim in
like manner.

Such petitions must, in conformity to the statutes 25 Geo. 3. c. 84. § 10. (*c*) and 28 Geo. 3. c. 52. § 1. (*d*) be subscribed in like manner.

Petitions of
3d class.

3. With respect to petitions of the *third* class (*e*):

Petitioner
must claim as
an elector.

Under the stat. 28 Geo. 3. c. 52. § 3. (*f*) any person or persons petitioning to be admitted party or parties in such cases, must claim to have had a right to vote at the election.

Petitions of
4th and 5th
class.

4 and 5. With respect to petitions of the *fourth* and *fifth* classes (*g*):

It is competent
to any person
to petition.

It is competent to any person or persons, coming in within the proper time, to petition the house to be admitted party or parties to oppose or to defend a right of election, or of ap-

(*a*) As to petitions in cases of elections for Scots burghs, see *post*, Sect. 10.

(*b*) For this class, see *ante*, 83.

(*c*) For this stat. see *ante*, 20.

(*d*) For this stat. see *ante*, 22.

(*e*) For this class, see *ante*, 83.

(*f*) For this stat. see *ante*, 24.

(*g*) For these classes, see *ante*, 84.

pointing a returning officer or officers, determined and reported upon, under the stat. 28 Geo. 3. c. 52. § 26, and 29 (*a*); the effects of decisions in these cases being of such importance that the law leaves it open to any persons, who may be able to adduce evidence upon the subject, to come forward and do so.

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Petitions of
4th and 5th
class.

The objections which may be made to petitioners, will be considered in the two following sections: Suffice it here to observe, that in whatever character a person may petition, he must be prepared, as a first step, to prove himself intitled to it, and without so doing he cannot proceed. And that upon the same principle, if electors petition in favour of a candidate, they must, in the outset, shew him to have been such.

Petitions in
general.

This was holden in the instance of a candidate in the case of *Newcastle-under-Lyne*, 1803, where the petitioners, having put in and proved the return, were proceeding to give other evidence of the facts stated in the petitions, when the counsel for the sitting members objected that it was necessary that the poll should be first produced and given in evidence; for that Mr. *Becket* petitioned as a candidate, and it was requisite he should prove it, and that the poll was the only evidence to shew who were candidates.

1 Peck. 490.
Petitioners
must prove
that they have
the character
in which they
petition.

(*a*) For this stat. see *ante*, 35, 36.

Sect. 3.

This was contended on the other side not to be necessary in any (a) particular stage of the cause: And it was insisted that there being also a petition of electors, that might be proceeded upon.

Electors petitioning in favour of a candidate must, in the first instance, shew him to have been such.

But the committee determined that the production of the poll was necessary before any further proceeding (b).

(a) This strictness seems to be of later years.—In the case of *Stafford*, 27th Nov. 1722, the committee first heard evidence and decided upon the right of election: The petitioners then proposed to shew that they had a majority, and offered a copy of the poll in evidence, which the committee was of opinion was not sufficiently proved; and the petitioners gave up the contest. 20 Journ. 64, and 1 Peck. 491, (n.) This was considered not to be necessary in a case where two polls were taken by persons whose spectively contended for the right to make the return. *Fowey*, 1791. 1 Peck. 518.

(b) Upon this determination being communicated to the parties, an application was made on the part of the petitioners for an adjournment of two days, for the purpose of obtaining the poll; but the committee resolved not to adjourn. And the case

was closed thereupon. 1 Peck. 492.

There have been many cases as to the authenticity of poll-books.

Buckinghamshire, 12th of March, 1727.—The clerk of the peace being called as a witness, produced eighteen paper books, which he said were delivered to him by the undersheriff as the poll-books taken at the election, that they were taken at different places, some by the sheriff's agents, and others by the agents for the candidates, but he could not distinguish or say which of them made the sheriff's poll, and none of the said books being either sworn to by the sheriff or attested by him, the committee did not think they had sufficient evidence to proceed upon; and resolved that the sitting member was duly elected; and the house negatived a motion to recommit their resolutions. 21 Journ. 80.

This rule was afterwards recognized in the cases of *Waterford*, 1803 (a), and *Dungarvon*, 1808; though in the former of these an indulgence of further time for the production of the poll was granted under particular circumstances (b).

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App. cccxxxvii.

Yorkshire, 24th February, 1735. It was objected against the production of the poll-books, by the deputy clerk of the peace, that the same had not been delivered over upon oath, and not within the time limited by law, and no proof having been given that no alterations had been made therein after the election and before the delivery: reference was made to the statute of *Anne*, and to the case of *Bucks* just mentioned, and the deputy clerk of the peace being further examined, it was resolved, "that books called the original poll-books of the last election, &c. produced by R. A. deputy clerk of the peace for the East Riding of the said county, and which were delivered over to him by the high sheriff of the said county in open court, at the quarter sessions of the peace for the said riding, about two months after the said election, as the original poll books, taken at the said election, and which have been kept by him the said clerk of the peace ever since among the records of the sessions of the peace for

the said riding, the said books not being delivered by the said sheriff within the time, nor upon oath as required by the act, (&c.) be admitted in evidence." 22 Journ. 587. 2 Peck. 270, (n.)

(a) See *post*, Sect. 11.

(b) In the case of *Herefordshire*, 1803; it was questioned whether the poll-books, which had not been delivered to the clerk of the peace according to the statute, could be produced in evidence by the witness who was called, such witness being his clerk by whom they had been brought to *London*. The committee declared that they did not take upon themselves to decide in whom the legal possession of the books was, but that they would receive them from the person who had the actual possession of them; and they ordered that the under-sheriff, or the person in the actual possession of the poll-books, should produce them. 1 Peck. 208.

As to a question where there are more poll-books than one. See *R. v. Davis*, 1 vol. 716, (n.)

Sect. 4.

SECTION 4. *Of objections to petitioners in election petitions appearing upon the face of the petitions.*

Petitions of
1st, 2d, and 3d
class.

THE subject matter of this section is applicable only with regard to petitions of the *first*, *second*, and *third* classes (*a*); and it is to be taken as applying equally to each of those classes.

Post, 128. (n.)

It is material to observe, that questions of the nature of those embraced in this and the following section are usually raised as preliminary ones, before the general merits of a petition are entered upon; and the propriety of this course is fully sanctioned by the case of *Sandwich*, 1808, where the order of proceeding was made the subject of particular discussion.

It ought to appear on the face of a petition that the petitioners are of the description required.

It ought to appear upon the face of the petition, that the party or parties subscribing it come within one or other of the descriptions required by law. It has not, however, been exacted, that there should be any strict technical allegation to that effect; it has been considered sufficient, if the petition, according to the common acceptance of its language, purports to be from the proper person or persons.

(a) For these classes, see *ante*, 82, 83.

Objections, however, have been frequently raised upon this head.

In the *Caermarthenshire* case, 1803, Mr. *Mansell Philips*, a petitioner, described himself in his petition “as a freeholder of the county of *Caermarthen* ;” a preliminary objection was taken before the select committee to his going into evidence of the matters contained in his petition, upon the ground that he had not described himself therein to be one of the persons permitted by the statute to present a petition, *viz.* as “claiming therein to have had a right to vote at the election to which the same related” (*a*). The question was argued; and the committee resolved, “that the petitioner should proceed.”

Middlesex, 2d February, 1804.—A petition had been presented, 7th December, 1802, and renewed 23d November, 1803, by certain persons calling themselves “freeholders of the county of

(*a*) An objection of the same nature was made before the statute, in the case of *Buckingham*, 22d January, 1688, and 16th April, 1689, *viz.* that the petitioners had not alledged that they were either electors, or elected, or candidates; but it seems to have been disallowed, as

the consideration of another point was proceeded upon. 10 Journ. 12. 89.

In the above case of *Caermarthenshire*, it was urged in argument that the above objection ought to have been made when the petition was presented to the house. 1 Peck. 290.

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Petitions of 1st, 2d, and 3d class.

1 Peck. 286. 290.

Petition signed by a petitioner as a freeholder of the county, without any further allegation as to his having had a right to vote, holden sufficient.

S. C. *post*, 111.

1 Peck. 294. Same point.

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Petitions of
1st, 2d, and 3d
class.

M.” complaining of the election of Sir *Francis Burdett*, and praying the house to take their case into consideration, and to grant to them such relief in the premises as to the house should seem meet. Upon a similar preliminary objection made in the house, it was much debated, whether the petitioners should not have more distinctly “claimed to have had a right to vote.” It was said, on the one hand, that the right to vote did not appear from their statement; they might be freeholders, and yet be minors, or women, or their freeholds might be under forty shillings a year. On the other hand, the weight of precedents was in favour of the petitioners, and it was said, that though it was required of petitioners to state their interest, it was sufficient if this were done in such terms as fell within the common understanding of mankind; that no technical phrases or particular forms of words were necessary. That it was apparent that the petitioners meant to claim to be legal electors. That after having received so many petitions in the same form (*a*), it would be hard to reject a renewed petition, two months after it had been received, and the day before it was to be taken into consideration, (such being the

(*a*) See the petitions, *Sterling*, 1st December, 1790. 46 Journ. 15.—*Orkney* and *Zetland*, 8th December, 1790. 46 Journ. 42.—*Radnorshire*, 14th Dec. 1790. 46 Journ. 59.

time of the debate.)—The petition was holden sufficient, the house negating the motion for discharging the order for taking it into consideration, 96 to 24 (*a*).

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Petitions of
1st, 2d, and 3d
class.

Boston, 1803.—The petition was described as of certain persons, “having a right to vote at the election of burgesses to serve in parliament for the borough of *Boston*.” A preliminary objection was made, that the words of the petition did not comply with the statute; the petitioners only claiming to have had a right to vote at *the* election, without saying the *last* election. It was argued, that such right might have accrued since the election: That they might have been disqualified at the time of the election, but not at the time of the petition. After argument, the committee decided that the petitioner should proceed.

1 Peck. 434.
Petition signed
by persons
claiming to
have had a
right to
vote at “*the*”
election, with-
out saying the
“*last*” election,
was holden
sufficient.

(*a*) It seems more prudent to adopt some of the terms which explicitly describe the petitioners as within the statute, as in the cases of *Taunton*, 1st Dec. 1790.—“Electors of the said borough at the last election.” 46 Journ. 16. In the *Dorchester* petition the electors stated, that the returning officer rejected the votes of the petitioners, “who had an undoubted right to

vote.” 3d December, 1790. 46 Journ. 27. *Downton*, 14th December, 1790. “That the petitioners did tender their votes.” Ib. 59. *Fowey*, 14th December, 1790. “Being persons who had a right to vote at the last election.”—Ib. 61. *Flintshire*, 5th Dec. 1796. “Freeholders of the county, and who were intitled to vote at the last election.” 52 Journ. 150.

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Petitions of
1st, 2d, and 3d
class.

SECTION 5. *Of objections to petitioners in election petitions, not appearing upon the face of the petitions.*

THE subject matter of this section, like that of the preceding, is applicable in cases of petitions of the *first, second*, and generally, though not always, of the *third* classes (*a*); but from its nature, it cannot well become material in any other cases. There are objections other than those which appear upon the face of an election petition, which may equally operate as impediments to its being entertained; and these may also be put forward against petitioners (*b*), as preliminary points.

(*a*) For these classes, see *ante*, 82, 83.

It has been seen that it is not necessary to intitle a person to present a petition either of the *fourth* or *fifth* classes, that he should be clothed with any particular character; but in the event of a person becoming a petitioner in such cases, who is under a disability to sue in the courts of law, (*e. g.* an alien enemy,) it should seem doubtful whether a petition from such a person ought to be entertained.

It might also be questionable, whether a person who from his religion will not take the oaths required of electors, and therefore,

though otherwise qualified, cannot vote, can become a petitioner.

(*b*) It is scarcely necessary to mention that there can be no objection to a person's becoming a petitioner, either as a candidate or an elector, in different petitions at the same time.

A person elected and returned for one place may petition upon a claim to a seat at another, nor will he be called upon to make his election as to his seat till such petition is disposed of.

A person petitioning in respect of an election at one place may become a candidate for another. On the 16th April, 1728, it was re-

The objections alluded to are : 1. That there have been undue practices in bringing forward the petition. 2. That a petitioner has not, in reality, the character which he assumes in subscribing the petition. 3. That a petitioner has precluded himself by some act of his own, from complaining of the matters of the petition. 4. That a petitioner, petitioning as having been a candidate, is ineligible or disqualified, or that he has not a qualification to enable him to sit in parliament. 5. That a petitioner, petitioning as an elector, is disqualified to vote.

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Pétitions of
1st, 2d, and 3d
class.

It is to be observed that a petitioner in any case, by becoming such, renders his whole conduct with regard to the election amenable to inquiry, in order to the discovery of objections, which would defeat the petition; and in the case of a candidate, with the further view also of shewing him to be incapacitated in the event of a re-election.

Caermarthenshire, 1803. The petition of Mr. *Philipps* (which was a case of an elector's petition), charged both Mr. *Williams* the sitting member, and Mr. *Paxton* the petitioning can-

1 Peck. 287.
291, 292.
S. C. ante, 107.

solved, "That a person petitioning and thereby claiming a seat in this house for one place, is capable of being

elected and returned for another place, pending such petition." 21 Journ. 136.

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Petitions of
1st, 2d, and 3d
class.

didate with bribery and treating, and the committee intimated that they desired he might proceed as well against Mr. *Paxton* as against Mr. *Williams*.

1 Peck. 99.
2 Peck. 188.
193.
Ante, 1 vol.
149, 150.

In the cases of *Coventry*, 1803, and *New Windsor*, 1804, which were cases of petitions by candidates, the legality of such inquiry was much disputed, but after full argument it was established. And it has been already explained upon the authority of the two latter cases, that this inquiry may be proceeded in, notwithstanding that a petitioning candidate should have abandoned his claim.

1. As to the objection that there have been undue practices in bringing forward the petition:

Undue practices as to
petitions to be
inquired into
in the first in-
stance.

If there be a ground for suspecting that there have been any such practices; as that the signatures thereto are not authentic, or that they have been procured by improper means, or that there has been fraud or improper contrivance in setting on foot the petition, that fact will be inquired into in the first instance.

This has been done in respect not only of election petitions, but of those which regarded

other subjects; and the house has, in many instances, rejected petitions upon such grounds.

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Petitions of
1st, 2d, and 3d
class.

Haslemere, 3d and 4th March, 1713.—Mr. *Oglethorpe* petitioned against the election and return, and the house being informed that he did not sign the petition, went into evidence upon the question, and it not appearing to have been signed by him, it was rejected.

17 Journ. 481.
883.
3 Lud. 158.

Wigan, 3d and 12th March, and 6th April, 1714 (a). The Earl of *Barrymore* petitioned against the election and return.—Upon similar information to the house to that in the preceding case, the committee were instructed, that before they should proceed in the said petition, they should examine the manner of signing the same. It appeared, that the petition was not signed by the Earl, but only by his order, and that he owned it. The committee were discharged from proceeding, and a motion that the Earl should be at liberty to prefer a new petition, signed by himself, and containing the same allegations as in the former petition, and no other, was negatived.

17 Journ. 481.
493. 541.

Petition not
signed by peti-
tioner himself,
rejected.

(a) See the cases of *Stirling*, *Dumbarton*, &c. 4th Feb. 1742, &c. 5th and 9th March, 1st post, sect. 10. and 6th May, 1714, and of

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Petitions of
1st, 2d, and 3d
class.
24 Journ. 348.
Preliminary
inquiry as to
signatures.

Wootton Bassett, 2d Dec. 1742, a petition complaining of an undue election and return.—Upon similar information to the house, they gave the like instruction to the committee of privileges and elections.

32 Journ. 85.
Same point.
S. C. *post*, 121,
n. (a.)

Pool, 2d December, 1768, a petition complaining of an undue election and return.—The house being informed that (amongst other objections) there was reason to suspect that some undue practices had been used to induce some persons to subscribe the petition, the committee of privileges and elections were instructed by the house to examine into the manner of procuring and signing the petition of the several persons whose names were thereunto subscribed being electors, before they should examine the matter of the petition.

10 Journ. 285.
Petitions to be
signed or
marked by pe-
titioners them-
selves.

And the house has, in the course of its inquiries, as to petitions relating to other matters, resolved, “That all petitions presented to the house ought to be signed by the petitioners with their own hands, by their names or marks (a).” And also, “That it is highly unwarrantable, and a breach of privilege of the house, for any person

34 Journ 800.
The putting
another's name
to a petition is
a breach of
privilege.

(a) 14th November, 1789.
This resolution passed, upon its appearing that a petition with respect to the silk ma-

nufacture had been signed by a scrivener in the names of persons who deputed him so to do.

to set the name of any other person to any petition to be presented to the house (a)."

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Petitions of
1st, 2d, and 3d
class.

If there has been fraud (b) or collusion in setting on foot the petition, and a colour given it which does not properly belong to it, the whole will be vitiated, and it will not be heard.

1st. *Canterbury*, 1796.—Mr. *Baker* and Mr. *Sawbridge* were returned, but their election was avoided on the ground of bribery and treating. Clifford, 353.

2d. *Canterbury*, 1797.—Mr. *Baker* and Mr. *Sawbridge* were again returned. A petition was presented, signed by *John Callaway* and thirty-six electors, against their return, upon the ground that they had been guilty of bribery, treating, and corrupt practices, at the election which was avoided; and that therefore they could not be elected to represent this city in parliament on the renewed election; and insisting, that although they had the majority of votes, Mr. *Gipps* and Sir *John Honeywood* ought to have been returned. Clifford, 357. S. C. I vol. 147, et post. 125. A petition, which charged the candidates in whose favour a petition was pending (as well as the sitting members) with bribery, &c. was rejected, upon the ground of connivance between the petitioners and the sitting members.

(a) 2d June 1774. This resolution passed upon the occasion of a petition having been subscribed in the names of certain persons (amongst others) without their authority. amine the signatures of a petition from *Carlisle*, praying for peace. 50 Journ. 238.

(b) See a question as to fraud in a renewed petition, and as to whether partial fraud can affect the whole petition.

19th Feb. 1795. It was referred to a committee to examine. *Honiton*. 3 Lud. 145. *Post*, 167.

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Petitions of
1st, 2d, and 3d
class.

There was also another petition, signed by one *Bunyer*, and a few other electors, stating that Mr. *Gipps* and Sir *John Honeywood*, as well as Mr. *Baker* and Mr. *Sawbridge*, were disabled and incapacitated to serve in parliament, by reason of bribery and treating, of which they had all been guilty at the former election.

Ibid. 361.

Upon the trial before the select committee, the counsel for the petitioners *Callaway* and others objected to the petition of *Bunyer* and others, as being contrary to the act of parliament (*a*), and founded in fraud, and offered to call evidence to prove it. After argument, the committee resolved, “that evidence to prove the fraud alleged was admissible.”

It was admitted that the petitioners *Bunyer* and others had voted for the late sitting members at the first, but that they had not voted at all at the last election. It was proved that their petition was not intended to be prosecuted adversely against Mr. *Baker* and Mr. *Sawbridge*; that it had been presented at their desire, and was prosecuted at their expense; that though these petitioners had not voted at the last election, yet, that during the course of it the sitting members had been seen at the house of *Bunyer*, that he had canvassed for them, and that some of the voters in their interest had been treated

(*a*) See *ante*, 57, n. (*a*)

in his house. It was also admitted, that the agent of these petitioners before this committee, attended the former committee, at the request of, and as an assistant to the agent of the sitting members.—After argument, the committee resolved, “that the fraud alleged against the petitioners *John Bunyer* and others, had been proved.”—And “that the said petition should not be heard.”

In the case of *Herefordshire*, 1803, one of the objections made to the petitioners who petitioned as electors against *Sir George Cornwall*, was that the object of the petition was not *bonâ fide* to try the merits of his election, but to deter the petitioners against *Colonel Cotterell*, the other sitting member (against whom another body of electors had petitioned), from proceeding in the trial of their suit; and there was some evidence from whence this might be inferred (a). The petitioners were not permitted

(a) It was proved, that the news of the petition being presented against *Colonel Cotterell* had irritated great numbers of the freeholders of *Herefordshire*; that the petitioners against *Sir George Cornwall*, who had voted for him, and four of whom had received his tickets, (intitling them to 5s. each) were heard to declare, that if *Colonel Cotterell* had committed a fault, *Sir George Cornwall* had done so likewise; and

that in consequence thereof they were very glad to sign the petition against him. It was admitted by the attorney who drew the petition, that such was the occasion, and the principle, upon which it had been presented. A letter also was produced from him to *Sir George Cornwall's* agent, offering to abandon the petition, if that against *Colonel Cotterell* were likewise given up. 1 Peck. 211.

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Petitions of
1st, 2d, and 3d
class.

1 Peck. 211.

Semble.

Same point.

S. C. post. 119.

121.

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class.

to proceed with their petition. But as there were other very important objections, it cannot be said how far this may have weighed in the decision.

I Peck. 434,
435.
S. C. *ante*, 109.
and *post*, 119.
Semble.
Petition en-
tertained,
notwithstand-
ing declara-
tions of peti-
tioner, that he
had no interest
in the success
of the petition,
that he did not
believe the
charge in it,
and that his
dependence on
the other can-
didate induced
him to sign it.

Boston, 1803.—It was attempted as a preliminary objection to one petitioner, (all the others being objected to upon another ground) that he had declared that he had no interest in the success of the petition, that he did not believe the sitting member to have been guilty of any bribery (that being the charge against him), and that his dependence upon the other candidate rendered it necessary for him to subscribe the petition. This was said to shew fraud and *mala fides*. But the committee resolved, “that the petitioners should proceed.”

2. As to the objection that a petitioner has not, in reality, the character which he assumes in subscribing the petition:

With respect to petitions of the *first*, *second*, and *third* classes (a):

However sufficient the petition may be upon the face of it (b), it is competent to the opposing

(a) For these classes, see the allegations in this particular, see *ante*, 107, *et seq.*

(b) As to the sufficiency of

party to go into evidence to shew that a petition is not within the description contemplated by the statute, and the objection, if established, will be decisive, as far as regards such petitioner.

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Petitions of
1st, 2d, and 3d
class.

Thus, in the above case of *Herefordshire*, 1803, it was proposed by the counsel for the sitting members to prove that a Mr. *Morse*, who had signed the petition, was no freeholder; and, therefore, had no right to petition. This was objected to on the other side, but upon deliberation, the committee resolved, "That the counsel might call witnesses to prove that *Morse* was no freeholder." And having heard evidence (a), they resolved, "that *Morse* was no freeholder, and that his name should be struck out of the petition."

1 Peck. 210.

Evidence
may be gone
into to shew
that petitioner
is not an elec-
tor.

The objection,
if proved,
fatal.

S. C. ante, 117,
and post, 121.

Boston, 1803.—An objection was made to all the petitioners, but one, that they were not legal electors, by reason that they were non-resident, which it was said was requisite in that borough. The nature of the objection seems not to have been disputed, but there was another subscriber to the petition to whom it did not apply.

1 Peck. 435.

Semble.

Same point.

S. C. ante, 118.

(a) A notice was proved to have been served on *Morse*, to produce his lease; and a copy of the lease signed and allowed to be such was offered in evidence; this was objected to, but the committee

determined, "that *M.*, not having produced the deeds after notice, his declaration (i. e. acknowledgment of the copy) should be received in evidence." 1 Peck. 210.

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Petitions of
1st, 2d, and 3d
class.

3. As to the objection that a petitioner has precluded himself, by some act of his own, from complaining of the matters in the petition:

With respect to petitions of the *first, second, and third* classes (a):

A person who has concurred in the return, by becoming party to it, or who has contributed to bring it about, by giving his vote for the party returned, cannot afterwards dispute its validity, as regarding such party. So far, therefore, he is estopped from becoming a petitioner.

That a person concurring in a return cannot afterwards dispute it, appears from the language of the resolution in the following case (although there was another ground of incapacity in the petitioner), and from the decision in a subsequent one.

Stamford, 27th March, 1677.—The petition of Mr. *Hatcher*, high sheriff for the county of *Lincoln*, being exhibited to the committee of privileges and elections, setting forth that he was duly elected for the said borough; “he having himself returned *Henry Nowell, Esq.*,” was unanimously rejected by the house.

(a) For these classes, see *ante*, 82, 83.

9 Journ. 407.

S. C. 1 vol. 109.
and post, 123.

A person who
has joined in a
return, cannot
petition
against it.

Weobly, 18th June, 1715.—The question was negatived, that *S. G.* and *J. M.* having signed the indenture of return, by which *Charles Cornwall*, Esq., was returned, the house would proceed on the petition of the said *S. G.* and *J. M.* complaining of an undue election of the said *C. C.* (a).

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Petitions of 1st, 2d, and 3d class.

8 Journ. 181. Same point.

The other ground of estoppel, namely, that of a person having given his vote for the party against whom he afterwards petitions, is analogous to the last, and is perfectly consistent in principle therewith. This appears to have been the ground which was chiefly insisted upon in the following case, in which the petition failed on account of objections to the petitioners; but as the decision was not narrowed to one point, such analogy and consistency is very material, as corroborating the proposition in question (b).

Herefordshire, 1803.—There were eight petitioners, of whom seven voted for Sir *George Cornwall*, the eighth was incompetent to petition upon another ground (already stated). It

1 Peck. 210. 214.

An elector cannot petition against the election and return of a party for

(a) In the case of *Pool*, petitioned. *Ante*, 114. 32 2d December, 1768, already mentioned, it was (*inter alia*) (b) This proposition was objected to six out of eleven assumed in argument by the persons, who had subscribed counsel for the sitting members, in the case of *Honiton*, 1786, and does not seem to have been denied on the other side. 3 Lud. 145.

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class.

whom he
voted at the
election.

S. C. ante,
117. 119.

was proposed to argue, that such seven petitioners could not be heard before the court, to complain of the election of Sir G. C., because they had voted for him. It was objected to this, that the petitioners had no notice that this exception was about to be taken, and were not prepared to defend their right. It was determined, however, that "the counsel should be at liberty to proceed (a)."

The point in question was thereupon (amongst others) fully discussed; after which the committee resolved, "that the counsel for the petitioners against Sir *George Corenwall* should not be permitted to proceed."

4. As to the objection, that a petitioner petitioning as having been candidate is ineligible or disqualified, or that he has not a qualification to enable him to sit in parliament:

This objection can only arise in petitions of the *first* and *second* classes (b).

It seems to be an established principle, that none but those who are capable of sitting as members of the house of commons can effec-

(a) It is to be collected from this resolution, that persons who petition as electors, must come prepared to prove that they are such; and that no further time will be granted to them so to do, if they are not prepared in the first instance.

(b) For these classes, see ante, 82, 83.

tually become petitioners in election petitions, in the character of candidates, inasmuch as it would be nugatory and idle, that a person should contend for a decision in his favor, the advantage of which he could not reap in the general result.

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Petitions of
1st and 2d
class.

An objection upon such ground may operate, as the nature of it may be, either partially in respect of a particular place, or generally in respect of all places, and may be insisted upon accordingly.

In the case of *Stamford*, 27th March, 1677.— In addition to the objection made to the petitioner, which has been already mentioned, Mr. *Hatcher*, who petitioned as a candidate, but whose petition was rejected, had, as far as regarded the election in question, a disqualifying office, and although that circumstance is not specifically adverted to, it probably was not unobserved by the house.

9 Journ. 407.
It seems that a person cannot petition as a candidate, who has a disqualifying office.
S. C. ante, 120, and 1 vol. 109.

Bedford, 16th April, 1728.—It was objected, that Mr. *Ongley*, who petitioned, was, by an office in the customs, disabled to sit or to claim to sit in parliament. The committee, after hearing evidence, resolved, “that having an office, &c. he was incapable of claiming to sit in parliament for the said borough (a).” Whereupon

21 Journ. 138, 139.
Same point decided.

(a) Although this was the language of the resolution, the incapacity was general.

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1st and 2d
class.

3 Lud. 162,
S. C. 1 vol.
143.

A person dis-
qualified to be
elected, if the
election of the
sitting mem-
ber were
avoided, can-
not petition as
a candidate.

his counsel admitted that the sitting members were duly elected.

Honiton, 1782.—Mr. *M'Leod*, who had been returned at a former election, but whose election had been avoided for bribery, became a candidate at the election to supply the vacancy. Mr. *Wilkinson* was returned, and Mr. *M'Leod* petitioned against him. An objection was made on the part of the sitting member, to Mr. *M'Leod's* going into evidence in support of his petition, for that his former return having been avoided for bribery, he was ineligible to supply the vacancy (a). After argument the committee resolved, “that the sitting member might proceed to produce evidence of the ineligibility of Mr. *M'Leod*,” and they afterwards resolved, “that the committee, who were appointed to consider the former petition (describing it), having declared the election of *Alexander M'Leod, Esq.* void; (the said petition containing no other allegations than of bribery and corrupt practices) it was the opinion of the then committee, that the said election was declared void, for bribery and corrupt practices only.” And, “that the said *Alexander M'Leod* was not eligible to fill the vacancy occasioned by the said resolution (b).”

(a) For the case of a petitioning elector alledged to be disqualified by bribery, see *post*, 132.

(b) They likewise resolved “that the counsel for the

electors should proceed to prove the allegations of their petition. Mr. *M'Leod* not being permitted to prove the allegations of his petition.”

It should be observed, that where an objection of this nature was made to the pretensions of candidates, who did not themselves petition, but in whose favor electors petitioned, such objection being made by those who were parties before the select committee, as sitting members, but not till after the committee had declared that they were not duly elected; the committee would not then permit them to go into the objection.

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class.

Canterbury, 1796 and 1797. The election of Mr. *Baker* and Mr. *Sawbridge* had been declared void for bribery and corrupt practices. They were also returned upon the re-election, but they were declared to be not duly elected. It being thereupon proposed on their part, to prove facts, which went to disqualify Mr. *Gipps* and Sir *John Honeywood*, who did not petition, but in whose favor certain electors petitioned, the committee determined that, "the counsel for the late sitting members should not be permitted to bring evidence to disqualify Mr. *Gipps* and Sir *John Honeywood* (a)."

Clifford, 357.
361.
S. C. 1 vol. 147.
and ante, 115.
Evidence
tending to
disqualify can-
didates, in
whose favour
electors peti-
tion, cannot
be adduced by
persons who
were returned,
as sitting
members, after
they have been
declared not
duly elected.

It seems, however, that nothing short of an absolute incapacity, the necessary consequence of which will be to disable, either in respect

(a) Upon this resolution the counsel for the sitting members withdrew, their cli-
ents being no longer parties to the cause.

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1st and 2d
class.

of a particular place, or in general, will be sufficient to substantiate an objection upon the grounds now under consideration. It is not sufficient to induce a select committee to reject a petition by a candidate, that there belongs to the petitioner, some circumstance whereupon it has been usual for the house, in their discretion, to forbid a member to remain among them.

1 Peck. 335.

A person who had been convicted of a libel, struck off the roll of attornies, and had received judgment of the pillory, was nevertheless allowed to petition as a candidate.

East Grinstead, 1803.—An objection was taken to the petitioning candidate's being heard before the committee, because he (Mr. *Frost*) had been convicted in the court of *King's Bench* of a libel against the government; had been struck from the roll of the attornies of that court; and had received judgment of the pillory: it was contended that the committee might and ought to enquire into this matter, and that if it appeared to be true, and that the petitioner, if duly elected, was from other circumstances unfit to sit in the house of commons, they should refuse to let him proceed.—The conviction, sentence, and the identity of his person were established; but it appeared that the sentence had never been put in execution, and that his recognizance had been discharged. The committee determined, after the objection had been fully argued, “that the petitioner should proceed.”

As to the objection that a petitioner, petitioning as having been a candidate, has not a qualification to enable him to sit in parliament:

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1st and 2d
class.

This objection can only arise in petitions of the *first* and *second* classes (a).

It has been already seen that the qualification of a petitioner, or a person in whose favour electors petition, may be inquired into.

Ante, 1 vol. 49.
54, 55.

It appears, however, from the following case, that the house will not enter at all upon the question of a petitioner's qualification, but will leave such enquiry entirely to the select committee.

Great Grimsby, 22d February, 1808.—The house was moved, that the resolution of the 21st November, 1717, as to a sitting member questioning the qualification of a petitioner might be read. And a motion being made, and the question put, that the notice delivered to the clerk of the house, by the Hon. *Charles Anderson Pelham*, requiring *John Henry Loft*, Esq., the petitioner against the last election and return for the borough of G. G., to deliver in a particular of his qualification; it passed in the negative.

63 Journ. 91.

(Ante, 1 vol.
49.)The house
will not enter
upon the
question of a
petitioner's
qualification,
but will leave
it to the select
committee.

(a) For these, see *ante*, 82, 83.

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1st and 2d
class.
63 Journ. 297.
363, 364, 375.

It further appears from the case of *Sandwich*,
6th, 24th, 25th, and 27th May, 1808 (a), that

(a) *The case of Sandwich, 1808.*

Right Honorable THOMAS GRENVILLE, Chairman.

Lord Viscount Stopford.

Hon. John Meade.

Earl of Mexborough.

Earl Gower.

William Shipley, Esq.

Sir George Bowyer, Bart.

Gustavus Rochfort, Esq.

Hon. Andrew Foley.

Edward Miller Mundy, Esq.

Charles Manners Sutton, Esq.

Hon. Booth Grey.

Sir Charles Morgan, Bart.

Richard Mansell Philips, Esq.

Sir William Elford, Bart.

} Nominees.

Petitioner—*Charles C. Morgan, Esq.*

Sitting Member—*John Spratt Rainier, Esq.*

Counsel for Petitioner—Mr. Pell, Mr. Reader.

Counsel for sitting Member—Mr. Warren, Mr. Gurney,
Mr. Elwin.

Mr. *Morgan* complained, by his petition, of the undue election and return of Captain *Rainier* upon various ground, not material with regard to the point upon which the case was decided.

where the proper notice has been given, on the part of the sitting member, of an intention to

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1st and 2d
class.

There was no petition from any electors. Previous to the trial of the petition, the regular notice, under the standing order of the house of the 21st Nov. 1717, was given on the part of the sitting member, that it was intended to question the petitioner's qualification.

The petitioner gave in his qualification (as he had done at the election) as heir apparent to his father, Major-general *Charles Morgan*, whom he stated to have such a qualification as would intitle him to sit as knight of a shire.

The counsel for the petitioner, having opened his case, and called the mayor, to produce the poll-book (from which it appeared that the only candidates were the sitting member and the petitioner); the counsel for the sitting member took an objection to the petitioner proceeding further in his case, upon the ground that he had not a sufficient qualification to entitle him to sit in the house of commons; and offering at the same time to prove, by evidence, that his father, as heir apparent to whom, he represented himself to be qualified, had not a sufficient qualification to be a knight of the shire. They insisted that the only ground upon which he could petition was, that he was aggrieved by not having been returned, having had a right so to be; but that he could not be said to be aggrieved by not having been returned, if he were not qualified to sit, because unless he were qualified, he could have no such right, inasmuch as in that case he was not intitled to be returned.

The counsel for the petitioner contended that this evidence could not be gone into in this stage of the case; that although the question as to the petitioner's qualification might

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Petitions of
1st and 2d
class.

If a question
be made as to
the qualifica-
tion of a peti-
tioning candi-
date, this will
be inquired
into in the first
instance.

question the qualification of the petitioner, the select committee will postpone their inquiry into the general merits of the case, until the question as to such qualification shall have been disposed of; and this upon the same principle, that it would be fruitless for a petitioner to struggle for a seat which he could not hold.

ultimately arise, yet that it could not be made a preliminary question, so as to prevent the trial of the merits of the election and return. The committee, however, decided, that the sitting member might go into such evidence.

Hereupon, the counsel for the sitting member proposed to call the father of the petitioner, to prove that he had not a sufficient qualification to entitle him to sit as a knight of the shire: The petitioner, however, admitted the fact.—Another argument then took place upon the effect of the evidence.

After which, the committee came to the following resolutions: “That it is the opinion of the committee, that the petitioner was not qualified to be a candidate for the town and port of *Sandwich*.”

“That it is the opinion of the committee, that the counsel for the petitioner shall not be permitted to proceed in his case.”

The committee came to the further resolution, and, on the 27th May, the chairman reported to the house, “That *John Spratt Rainier*, Esq. was duly elected.—And that the petition of *Charles C. Morgan*, Esq. did not appear to the committee to be frivolous or vexatious.”

5. As to the objection that a petitioner petitioning as an elector is disqualified to vote :

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Petitions of
1st, 2d, and 3d
class.

With respect to petitions of the *first, second,* and *third* classes (a) :

This objection is similar in principle to those which have been just mentioned, as applying in the case of a candidate.

The ground upon which an elector is permitted to petition is, that he has a direct and positive interest in the return of the proper person ; and that a petitioner, in such case, must really and legally be an elector, has been already seen. If he be no elector, he has no sufficient interest whereupon to found a petition.

For the same reason, a person who has a title to be an elector, but is incapacitated from voting by some personal disqualification, cannot legally become a petitioner, inasmuch as not being able to exercise his franchise, it is for these purposes the same as if he had none.

A person having a title to be an elector, but disqualified from voting, cannot petition.

The case in which this point has arisen has been that of an alleged disqualification by bribery, but the same reason would hold in any other case of disqualification.

(a) For these classes, see *ante*, 82, 83.

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1st, 2d, and 3d
class.

Grounds of the
above doctrine.

That such has been considered as the law, (though, perhaps, it cannot be said to have been expressly so decided), is sufficiently evident, from the admission of testimony to substantiate such objections to petitioners (a).

1 Peck. 290.
S. C. ante, 1 vol.
580, (n.) and
post, 137.
Evidence of
bribery ad-
mitted against
a petitioning
elector.

Caermarthenshire, 1803.—Mr. *Philipps* petitioned, as an elector, against the return of Mr. *Hamlyn Williams*. The counsel for the latter made an objection to the petition being heard, and proposed to prove, by evidence, that he had been guilty of receiving a bribe at the last election, arguing that on that account being disqualified to give a vote, he was also incapable of presenting a petition. Evidence was produced

(a) In the case of *Herefordshire, 1803*, the decision was not narrowed to any one point, but, in addition to the objections already stated to have been made to the petitioners against Sir *George Cornwall*, it was insisted, as to four of them, that they being electors, had received tickets, which were to entitle them to 5s. each, and, therefore, that they were accomplices in the offence of bribery (the giving such tickets being the bribery alleged against the sitting members.)

To this it was answered, that this was a parliamentary proceeding; perhaps, strictly speaking, neither civil nor criminal; but a proceed-

ing for the vindication of the purity of elections, not reducible to any of the rules which govern proceedings in the courts of law. It was contended further, that there was no case, nor any principle of parliamentary law, which excluded even accomplices from becoming petitioners. It was even said, that there was no reason why men, who had received bribes themselves, should not be heard as petitioners to set aside an election on the ground of corruption.—Upon some, or all of the objections (*ante*, 117. 119. 121.) the committee decided, that the petitioners should not proceed. 1 Peck. 211 to 214.

in support of the objection. After argument upon the effect of which, the committee determined that the petitioner might proceed.

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Petitions of
1st, 2d, and 3d
class.

SECTION 6. *Of the form of election petitions, and the degree of minuteness required in the allegations therein.*

IN this section it will not be necessary to distinguish the classes of petitions, the matter being, in some degree, applicable to all.

When it is intended to impeach the validity of an election or return, a petition must be prepared and presented to the house of commons, stating, in proper and respectful language, and without impertinent matter, the grounds upon which such election or return is alleged to have been insufficient (a).

Petition to
contain spe-
cific charges.

(a) For the form of a petition, see *App. cccclxi. et seq.*

It should be fairly written on parchment. And it would be better that there should be no interlineation or erasure. In the case of a petition respecting an inclosure act, where there was an erasure in the prayer, the house referred it to a committee to inquire and report by what means it came to be erased,

and whether it was previous or subsequent to the signing thereof. 29th Jan. 1768. 31 Journ. 558.

It seems that a trifling incorrectness of expression will not vitiate a petition, as where a petition was stiled of *several*, but was signed by *one* only. Although it was a disputed case, no objection was made on this head. *Seaford*, 1765. 3 Lud. 2.

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general.

The same nicety is not required in election petitions as in pleadings at law; but the nature of the case intended to be made, on the part of the petitioner, must distinctly and expressly appear in such manner as to possess the house, and the opposite party, in a general way, of the sort of objections which are to be brought forward.

The strictness in this particular has grown up in more modern times, principally since the passing of the *Grenville Act* (a); but there has now been a succession of cases, in which the question has been raised, whether the matter proposed to be proved were sufficiently pointed at by the allegations of the petition, in some of which an objection upon this ground has prevailed, and in others not (b).

It is not practicable to lay down any broad

(a) Mr. *Luders*, in his note (A) to the case of *Nairn*, shews how very general the allegations in petitions formerly were, and what latitude was given with respect to the evidence in support of them. 3 Lud. 404.

(b) It seems that notwithstanding the decisions in the second class of these cases, it is the more prudent way, as well as the more respectful to the house, to state the charges as distinctly as possible.

It is not necessary to state the names of voters objected to, where that is the ground of petition; but it is usual to point out the sort of objection intended to be raised against each class of voters. If the objection be that there was any irregularity in the election, such irregularity ought to be alleged.

governing principle upon this point; the law can only be collected by an examination of the cases in which it has been agitated.

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The leading decisions, either way, are therefore mentioned in the order in which they have occurred.

1. As to the cases wherein the objection of insufficiency of statement in the petition has prevailed :

Sudbury, 18th Nov. 1768, and 15th Feb., 1770.—The petitioner's counsel proposed to prove that several of the persons who voted for the sitting members were not qualified; but the house (a) would not admit it, the petitions containing no allegation upon that head more specific, than "that the petitioning candidate ought to have been returned."

32 Journ. 43.
704, 705.
Insufficient
allegations as
to disquali-
fications of
electors.

Petersfield, 1775.—Under a petition, setting forth, that Sir *Abraham Hume*, Bart., "high sheriff for the county of *Hertford*," *William Jolliffe*, and the petitioner, (Mr. *Luttrell*), were candidates; it was proposed, on the part of the

3 Doug. 3, and
15, (n.)
Insufficient al-
legation as to
disqualifica-
tion of can-
didate.

(a) This case was tried at the bar of the house. See the case of *Nairn*, 1786, *post*. Sect. 10.

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latter, to object to Sir *A. H.*, as ineligible; but it was insisted, on his part, that there was no express allegation to that effect in the petition, the words following the name of Sir *A. H.* being merely *descriptio personæ*. The committee resolved, that “the counsel should not be permitted to argue the point of the ineligibility of Sir *A. H.*, as high sheriff for the county of *H.*, the same ineligibility not being an allegation in the petition.”

4 Doug. 87.
143.
S. C. ante,
1 vol. 108.
160, (n.) 161.
Insufficient
allegation of
irregularity of
precept, con-
trived by she-
riff to serve a
candidate.

Southampton, 1776.—The committee having decided that Mr. *Fleming*, the sitting member, was eligible; it was proposed, by the counsel for the petitioners, to prove that the sheriff of *Southampton*, in making out his precept to the returning officers, had not followed the words of the writ, as is the practice, but had omitted the *nolumus* clause; and, further, that this was done from improper partiality, and with a view to serve Mr. *Fleming*. On his part, this evidence was objected to as inadmissible, there being no charge on that ground, in the petition. It was answered, that the general allegation of the undue return of Mr. *F.* was sufficient to let in such proof. But the committee resolved, “that the evidence proposed to be given, could not be gone into, the matter not being alleged in the petition.”

London, 1804.—The petitioning candidate, Sir *Watkin Lewes*, alleged in his petition that the poll commenced “at nine o’clock in the morning of the 7th, 8th, and 9th of July, and closed on each of those days at three o’clock in the afternoon.” But no complaint was made that the time was shorter than is allowed by law. The counsel for the petitioner proposing to prove that the returning officers had continued the poll open only six hours instead of seven, which they contended was required by law, the counsel for the sitting members insisted that the petitioner was not intitled to avail himself of this matter, not having stated it in his petition; that the above statement was matter of recital only, and not of complaint, and could not have been meant to be understood as a ground of charge against the returning officers. The committee determined, “that the counsel for the petitioner should not give evidence of the number of hours spent each day in polling, that not being stated as a matter of complaint in the petition.”

Caermarthenshire, 1803.—The petitioning candidate, Mr. *Paxton*, complained by his petition, (*inter alia*) that the sheriff had appointed several persons to act for him in the different

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2 Peck. 271.

273.

S. C. ante,

1 vol. 6 1.

(n. a.)

Insufficient allegation, as to irregularity in taking the poll.

(See 1 vol. 629. 631.)

1 Peck. 286.

289.

S. C. ante. 132.

1 vol. 580, (n.)

Insufficient allegation as to illegality of appointment of sub-sheriffs.

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general.

booths, who behaved in the most partial, arbitrary, and illegal manner.—Upon his counsel insisting, as a ground of complaint against the sheriff, that the appointment of sub-sheriffs was wholly illegal, and unknown to the law, the committee, (there being no other statement in the petition at all relevant to such a charge) decided, “that it was not competent for him to go into the illegality of appointing sub-sheriffs, that not being an allegation in the petition.”

41 Journ. 155.
1 Lud. 406,
407.

In the case of the county of *Nairn*, 1786 (*a*), where certain voters were objected to by name in the petition, which also contained general allegations, that *A. B.* was returned instead of *C. D.*, a question was made, whether the vote of a person, whose name was not among those in the petition, could be objected to.—The decision was that it could not; but the language of this resolution is so far qualified, as to make it, perhaps, not generally applicable.

(*a*) For this case, see *post*. three votes, which had been
Sect. 10. tendered for them, and re-
jected; the counsel for the
Downton, 1784.—Upon an petitioner said, that he should
intimation, on the part of Mr. oppose it, on the ground,
Bouverie and Mr. *Scott*, who that their petition contained
having been returned by the no allegation to that effect.
person who was adjudged by But these votes were never
the committee to be the legal afterwards mentioned. 1
returning officer, of an inten-
tion to contend in support of Lud. 279.

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general.

2. As to cases where the objection of insufficiency of statement in the petition has not prevailed:

Northampton, 10th and 22d November, 1768, and 7th Feb., 1769.—Mr. *Howe* complained, by his petition, that the returning officers, from the commencement of the canvass, gave notorious and repeated proofs of their attachment to the other candidates: The petitioner's counsel proposed, under this allegation, to examine a witness to prove the attachment and predetermination in the returning officers, in favor of the sitting members; which evidence was objected to, so far as it related to their behaviour previous to the petitioner becoming a candidate, as not being part of any of the allegations of the petition. But the house permitted the evidence objected to, to be given.

32 Journ. 26.
55. 183.
2 Peck. 273. (n)
Sufficient allegation of partiality of returning officer.

In the second *Cricklade* case, 1776.—The petition, after charging that votes offered for Mr. *Dewar* were improperly rejected, and that votes for Mr. *Peach*, the sitting member, were improperly admitted, and some of them, under colourable and fraudulent conveyances; contained an allegation, that by these, “and other undue, corrupt, and illegal practices, the latter procured himself to be returned.” It was pro-

4 Doug. 3. 3.
14. 54, 55.
Sufficient allegation, under which evidence of bribery admitted.

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general.

posed, on the part of the petitioner, to prove bribery against the sitting member. This produced a question, as to the admissibility of such evidence, under the above allegation. After argument, the committee determined “that the counsel for the petitioners were at liberty to enter into the proof of bribery by *Samuel Peach*, Esq. (the sitting member), it being comprehended (in the words) *corrupt practices*, alleged in the petition (a).”

1 Lud. 415.

441.

S. C. ante,

1 vol. 52. 54. (n)

Sufficient allegation of bankruptcy, as raising the question of want of member's qualification.

Colchester.—The petition of Sir *Robert Smyth* stated that *Christopher Potter*, Esq., the sitting member, had been declared bankrupt, and that an assignment of his estate and effects was made for the benefit of his creditors; that he had no freehold estate; that the petitioner was informed that no more than 2s. 6d. in the pound had been paid to his creditors, and that for these reasons the petitioner begged leave to represent to the house, that the said *C. P.* had not, at the time of the election, such an estate in law or equity, &c. as qualified him to be elected.—It was said, on the part of Mr. *P.*, that the petition did not directly aver the incapacity, but was argumentative, and supposed it by inference from the facts alleged, viz. “Having been a bank-

(a) The practice is to allege bribery specifically.

rupt," &c. &c. That the facts might be true, and yet the conclusion did not follow. That he had been a bankrupt, but was afterwards enabled by his certificate.—The committee resolved, "that the petition did contain an express charge of want of qualification against the sitting member."

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Norwich, 1787.—Upon the return of Mr. *Hobart*, a second time, after his former election had been declared void, certain electors petitioned, repeating so much of the petition relating to the former election as contained the charges of bribery and treating thereat, and setting forth the resolution of the former committee, upon evidence confined on the part of the then petitioners to the allegations relative to the bribery and entertaining the electors; and stating that they conceived that Mr. *Hobart's* election, "having been declared void, on the ground of his having violated the acts of parliament against bribery, and entertaining the electors; he was thereby, and by the true construction of such acts of parliament, and according to the law and custom of parliament, rendered incapable to represent the city of *N.* in parliament at any election to fill the said vacancy. And, therefore, that he was not eligible, and ought not to have been returned at the late election." The

3 Lud. 455.

461. 469.

(Ib. 441. 445.)

S. C.

1 vol. 144, 145.

Sufficient allegation of incapacity by bribery and treating at former election.

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general.

counsel for the petitioners, in opening their case, stated the circumstances of the former election, and the general effect of the evidence then before the court. Upon this, the counsel for Mr. *Hobart* objected to their going into such evidence, upon the ground that there was no charge in the petition expressly and directly affecting the sitting member with an offence that should subject him to the incapacities contended for; that it alleged no fact *expressly* leading to any such conclusion, neither bribery nor any other charge. But the committee resolved, (as far as the objection went to the charge in the petition) “that the counsel for the petitioners should proceed with the evidence.”

Clifford, 353.
355.

S. C. *ante*, 115.
125. and
1 vol. 147.

It seems that a prayer that the election may be declared void, and for further relief, is sufficient, whereunder to seat a candidate, without an express allegation that he ought to have been returned.

Canterbury, 1796.—The petition, charging Mr. *Baker* and Mr. *Sawbridge*, the sitting members, with having been guilty of bribery, treating, and other corrupt and illegal practices, alleged that they had obtained thereby a majority of votes; and that they were returned, although disabled and incapacitated by these practices, &c. It prayed that the election and return might be declared void, and for such further relief as to the house should seem meet.—It was contended, by the counsel for the sitting members, that in conformity to the allegations and prayer of the petition, the petitioners could

only offer evidence to render the election void, but not to seat the other candidates, *viz.* G. G. Esq. and Sir J. H. But the committee resolved “that under the allegations and prayer of the petition the counsel should be allowed to go into evidence, the result of which might declare *George Gipps, Esq. and Sir John Honeywood* legally elected.”

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Middlesex, 1804.—Mr. *Mainwaring's* petition contained an allegation that the undue conduct of the sheriff, during the election, was highly injurious to the petitioner and to the rights of the real electors of the county, &c.; that the sitting member had obtained a colourable majority over the petitioner, and that by the partiality and undue conduct of the sheriff he had procured himself to be returned. Evidence being offered of tumultuous proceedings, which had taken place during the poll, and of certain scandalous and indecent exhibitions and insulting speeches directed against Mr. M. which had been permitted by the sheriffs in their presence, and in the front of the hustings. It was objected, by the counsel for the sheriffs, that the petition contained no allegation under which this evidence could be introduced: It was answered, that a general allegation of misconduct let in proof of particular instances. The committee decided “that the examination should proceed.”

2 Peck. 1. 4.
Sufficient allegation where-
under to admit
of misconduct
of returning
officer.

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1 Peck. 95.

Sufficient allegation of a want of qualification in a sitting member, that he was not "possessed" of a qualification.

Coventry, 1803.—It was complained, by the petition, that Mr. *Jefferys*, one of the sitting members, was not *possessed* of a qualification. It was objected, by his counsel, to the terms of it, that the statute of *Anne* did not require a possession, but only that the member should be seized of, or *intitled to*: that it would be sufficient therefore that he could be proved to have a title to this qualification. The decision turned upon the qualification itself; but the committee, by entering upon the question, must have considered the allegation in the petition to be sufficient.

The next cases stand upon their own peculiar circumstances, and the like can only arise in cases of double returns.

3 Lud. 173.

195. 203.

In a case of double return, and one of the persons returned abandoning his claim, the other person returned was so far considered in the situation of sitting member as to let him dispute the votes of the first, without any allegations in his petition as to their insufficiency.

Downton, 1785.—There was a double return, in consequence of there being two persons who claimed to be returning officers. Mr. *Bouverie* being returned by one, and Mr. *Conway* by the other. There were four petitions, by different sets of freeholders, of which the first was by freeholders in the interest of Mr. *Bouverie*, complaining of Mr. *Serle's* having interrupted the poll taken by Mr. *Dagge*, and having taken one himself, and praying that the return made by him (of Mr. *Conway*), might be taken off the file. The second petition was by other freeholders,

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general.

on the same side, alleging that Mr. *Bouverie* had a clear majority of legal votes, and was duly returned by the proper officer, Mr. *Dagge*. The third petition was by two freeholders who had tendered their votes for Mr. *Bouverie*, and who complained that they were rejected. The fourth was by freeholders, on the side of Mr. *Conway*, alleging that votes for him had been illegally rejected by *Serle*, and illegal votes for *Bouverie* received.

Upon the commencement of the case, the counsel for Mr. *Conway* relinquished the claim of Mr. *Serle* to be returning officer, and Mr. *Conway*'s counsel began as for a petitioner.—When the counsel on the part of Mr. *Conway* had finished their case, those on the part of Mr. *Bouverie* opened theirs, and on their proposing to enter upon objections to twelve of Mr. *Conway*'s votes, the counsel on the other side objected to this; contending, that there was no allegation in any of the petitions in favor of Mr. *Bouverie* to warrant it, and that the committee could not receive evidence of any other facts than those therein stated.

It was answered, that Mr. *Conway* having abandoned his return, Mr. *Bouverie* became placed in the situation of a sitting member; that

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a sitting member alleges nothing in the form of a charge, but is intitled to defend himself as well as he can, in all those ways in which he is attacked.

The committee determined in favour of the admission of the evidence.

1 Fraz. 69.
151. 162.
Same point.

Oakhampton, 1791.—There had also been a double return; one by the mayor, of Messrs. *St. Ledger* and *Ladbroke*, and the other by the portreeve, of Messrs. *Anderson* and *Townson*. The question as to the proper returning officer for this borough being first discussed, the committee determined, that the mayor was the proper returning officer, whereby Messrs. *St. Ledger* and *Ladbroke* were placed in the situation of sitting members. In the course of the cause, the counsel for Messrs. *St. L.* and *Ladbroke* opened evidence to prove that some voters had been improperly admitted by the mayor to vote in favor of Messrs. *Anderson* and *Townson*. Whereupon the counsel for the latter gentlemen said, that if the object of that evidence was to impeach the mayor's poll, in respect of votes admitted for his clients, he must observe, that the petition of Messrs. *St. Ledger* and *Ladbroke* contained no allegation of misconduct in the mayor, or that he received votes against them which ought not

to have been received. After this objection had been argued, the committee resolved, "that the counsel for Messrs. *St. Ledger* and *Ladbroke* be permitted to adduce evidence to impeach the votes on the mayor's poll for Messrs. *Anderson* and *Townson*."

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Fowey, 1791.—A double return; one return being made by Mr. *Stackhouse*, and another by Mr. *Mein*, each claiming to be the legal returning officer. The committee decided that the latter was the proper officer, which established the return of Lord *Shulldham* and Sir *Ralph Payne*. Whereupon the counsel for Lord *Valletort* and Mr. *Rashleigh* proceeded as petitioners. It was contended, on their part, that Lord *Shulldham*, and Sir *Ralph Payne*, could not object to any vote for them, received by Mr. *Mein*, there being no such allegation in their petition; that they were not entitled to the privilege of sitting members, because that privilege arose from the circumstance of a sitting member having no opportunity of stating his case; that Lord *Shulldham* and Sir *Ralph Payne* having had an opportunity, ought to have alleged all the matters which they meant to prove. The committee determined, that it was competent to the counsel for Lord *Shulldham* and Sir *Ralph Payne* to impeach any

1' Peck. 512.
518. 522, 523.
Same point.

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general.

votes standing on the poll in favour of Lord
Valletort and Mr. *Rashleigh*.

SECTION 7. *Of supplemental election petitions.*

On discovery
of new matter
after petition
presented, a
supplemental
petition may
be presented.

IT is competent to a petitioner, upon the discovery of new matter since his petition was presented, to present also a supplemental petition, of which such new matter forms the subject, praying, that as well the original as the supplemental petition may be taken into consideration by the house at the same time.

This has been done occasionally (*a*); but as it is always open to petitioners to put in petitions from electors who have not been parties to any former petitions, if within the proper time, and as no extended time is allowed for supplemental petitions, there seems no good reason for adopting this course, unless, perhaps, that of avoiding the entering into recognizances by the additional set of petitioners.

(*a*) See the case of *Kirkwall*, 7th June, 1784, *post*, Sect. 10, and 40. Journ. 99, where see the form of such a petition.

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Petitions in
general.SECTION 8. *Of renewing election petitions.*

AN election petition, of whatever class it may be, if not taken into consideration in the session in which it is presented, falls to the ground by the determination of the session.

In order therefore to give effect, in such case, to a petition in a subsequent session, (and, indeed, in order to comply with the terms of the recognizance in those cases where recognizances are required,) it must be renewed (*a*) in every succeeding session, until a committee shall have been appointed for the trial, or until it shall have been withdrawn by the permission of the house.

(See post,)
Chap. 3.
Sect. 1.

If a petition be not renewed, the petitioners are considered as having altogether abandoned their cases.

1. & 2. As to petitions of the *first* or *second* classes (*b*):

Petitions of
1st and 2d
class.

By the terms of the recognizance required of petitioners, under the stat. 28 Geo. 3. c. 52.

To comply
with recog-
nizance to be
renewed within
four sitting
days after
commence-
ment of subse-
quent session.

(*a*) It is almost superfluous to observe that there can be no petition of this nature where there has been no

original one. See 3 Doug. Pref. vi.

(*b*) For these classes, see *ante*, 82, 83.

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Petitions of
1st and 2d
class.

35 Journ. 38.
437.

Leave to re-
new a petition
after the pro-
per time re-
fused.

§ 5 (a), the petition must be renewed within four sitting days after the commencement of every subsequent session.

In the case of *Dumbarton*, 12th Dec. 1774, and 10th Nov. 1775, which will be presently stated (b), where a petitioner did not renew his petition within the time, but evidence was given of his being abroad on his majesty's service, an application for further time to renew was refused.

59 Journ. 21.

On the 30th November, 1803.—The speaker informed the house, that the petition, complaining of an undue election and return for the borough of *Kingston-upon-Hull*; and also, the petition complaining of an undue election and return for the borough of *Leominster*; and also, the petition complaining of an undue election and return for the borough of *Shaftesbury*; and also, the petition complaining of an undue election and return for the borough of *Boston*, which petitions were depending before the house, at the end of the then last session of parliament, had not been renewed in the then present session, (which began on the 22d of November); and that in pursuance of an act made in the twenty-eighth year of his present majesty, he had certified into the Court of Exchequer, the recognizances entered into in

(a) See *ante*, 39, (n.)

(b) See *post*, Sect. 10.

respect of the said several petitions; and had also certified the default, which had been made in the performance of the condition of the said recognizances.

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Petitions of
3d class.

3. With respect to petitions of the *third* class (a):

It seems that there is no express regulation, with respect to the renewal of such petitions (b), but that the terms of the standing order are sufficiently large to embrace them.

No time for re-
newing point-
ed out.

App. dcxiv.

4. With respect to petitions of the *fourth* class (c):

Petitions of
4th class.

The stat. 34 Geo. 3. c. 83. § 1 (d), directs that renewed petitions shall be presented within fourteen days after the commencement of every subsequent session or sessions. And by § 2, if any such petition be not renewed, the judgment of the committee as to the right reported upon, is to be final and conclusive in all subsequent elections.

To be renewed
within four-
teen days of
every subse-
quent session.

5. With respect to petitions of the *fifth* class (e):

Petitions of
5th class.

(a) For this class, see *ante*, 83. house in a subsequent session.

(b) *Ex cautela* it would be prudent in petitioners of this class, to renew their petitions upon the first meeting of the

(c) For this class, see *ante*, 84.

(d) For this stat. see *ante*, 42.

(e) For this, see *ante*, 84.

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Petitions of
5th class.

No rules as to
renewing.

It is obvious that there need be no rules as to renewing such petitions, it being competent to any person to petition previous to the hearing of the case, without being restricted by his former petition.

Petitions of
1st, 2d, 3d, and
4th class.

Renewed pe-
titions to be
substantially
the same as
original ones.

A renewed petition must be substantially the same as the original one. It will not be permitted that it should go beyond that which was at first presented, by the introduction of new allegations, or the addition of fresh signatures, as this would be an evasion of the standing order, which limits the time for presenting petitions. Neither will it be permitted, that any material part of the original petition should be dropped, as that would, in some degree, defeat the law, which forbids the withdrawing petitions without leave of the house. There ought to be no essential alteration, either by insertion or omission (a).

3 Doug. Pref.
ix.

There is no express resolution or order of the house marking out this line of restriction; but such has been recognized and acted upon, as the established law of parliament in a variety of instances, and the instructions of the house to committees have long been in conformity to it.

If there be a suggestion by any member, that a renewed petition materially differs from the

(a) The safer way seems that the renewed petition should be a copy of that originally presented.

original one; should the difference be apparent, the house will reject it at once; but if there be a doubt thereupon, they will refer it to a committee (a) to examine whether the petitions in question are the same in substance, and to report their opinion upon the same to the house.

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class.

This has been done in a variety of cases, the general result of which is, that a very trifling difference in substance will be fatal, though it does not seem practicable to give any precise rule as to what shall amount to such difference.

The better way therefore will be to mention the cases in the order of time in which they have occurred. And it may be here observed, that in all the cases where the petitions were not holden to be the same in substance, the committee of privileges and elections were ordered not to proceed any further in the petition.

Reading (b), 6th December, 1698; 24th November, 1699.—There was a petition in the first session, and a renewed petition in the

12 Journ. 351.
13 Journ. 5.
64.

(a) It seems that such special references were generally occasioned by some suggestion to the house, (either at the time of presenting the petitions, or afterwards,) of some circumstances making it necessary. See 3 Lud. 168, note (B) to the *Honiton* case.

(b) The first petition of Sir *Thomas Stamp* stated that the petitioner and others stood candidates; that he had the majority of legal votes, and ought to have been returned with Sir *Owen Buckingham*, and yet that *John Dalby*, Esq., was returned with him. 12 Journ. 351.—The se-

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1st, 2d, and 4th
class.

Where the first
petition merely
claimed the
return, and
the renewed
petition con-
tained alle-
gations of the
misconduct of
the returning
officer, the
latter was
holden bad.
13 Journ. 83.

12 Journ. 350.
13 Journ. 6.
245. 271.

Where the
first petition
was against
two members,
and the re-

second session.—15th Dec. 1699. The house being informed that the latter petition was different from that presented the former session, the committee of privileges and elections were ordered to examine whether they were the same in substance, and to report the same with their opinion to the house, before they should proceed upon the merits of the election.—19th Dec. 1699. The committee reported that these petitions were not the same in substance; and the house agreeing, it was ordered that the committee of privileges and elections should not proceed any further upon the said petition.

Mitchell, 12th Dec., 1698; 27th Nov., 1st and 6th March, 1699.—It was referred to the committee of privileges and elections to examine whether the petition presented in the latter

cond petition of Sir *Thomas Stamp* set forth the names of the candidates, and that they severally appointed a person to give notice of such as they conceived had no right to poll, in order to their being queried and examined: That the mayor forbid *E. W.*, appointed by the petitioner, to give such notice, and several times threatened to strike him if he did, which deterred him from giving notice, and many were polled who had no right: Whereupon the petitioner demanded a scrutiny, but the mayor

would allow him but two hours time, to refresh and procure friends to assist in the scrutiny, although 1340 persons were polled; that the petitioner, and his friends, came at the time and place by the mayor appointed; but before that, he had declared the election for Sir *Owen Buckingham* and Mr. *Dalby*, without any scrutiny. That Mr. *Dalby*, by promises and threats, procured himself to be returned, though the petitioner had a majority of legal votes, and ought to have been returned. 13 Journ. 5.

session was the same in substance with that presented in the former (a). The committee reported that it was their opinion, that the petitions were not the same in substance. And they were therefore discharged from proceeding thereupon.

The only material difference seems to have been, that the first petition was against two members, and the second against one only.

Dartmouth, 12th December, 1698, and 28th November, 1699.—There was a petition, and a renewed petition (b). The house being ac-

(a) The first petition of *Antony Row*, Esq., set forth, “that at the election of members to serve, &c. the petitioner had a very great majority of legal votes for him; but that the portreeve of the said borough had unduly returned Sir *John Hawles* and *John Povey*, Esqrs. to the prejudice of the petitioner’s right: and praying the house to take the matter into consideration, and to give him such relief as the house should think fit.”

The second petition of *Antony Row*, Esq., set forth, “that the portreeve of *Mitchell*, in the county of *Cornwall*, hath unduly returned Sir *John Hawles* as a burgess, to serve in this present parliament for the said borough, in manifest wrong to the petitioner, who had a great

majority of legal votes: and praying such relief as may be consistent with the justice of the house.”

(b) The first petition of Mr. *Whitrow* set forth, “that he was duly chosen a burgess to serve in this present parliament, for the borough of *Clifton-Dartmouth-Hardnesse*, in the county of *D.*; yet the mayor had returned Sir *Joseph Herne*, and *Frederick Herne*, as chosen.”

The second petition of Mr. *Whitrow* set forth, “that Sir *Joseph Herne*, and the petitioner, were duly chosen members to serve in this present parliament for the borough of *Clifton-Dartmouth-Hardnesse*, in the county of *D.*; but the mayor of the said borough was prevailed with to return *Frederick Herne*, Esq., in wrong to the petitioner.”

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newed petition was against one, the latter was holden bad.

And see *post*, 158.)

12 Journ. 352.

13 Journ. 7.

Same point.

Renewed petition rejected by the house.

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class.

quainted that the former petition was against both the sitting members, and taking notice that the present petition was only against one of them, a motion for referring the petition to the consideration of the committee of privileges and elections was negatived.

12 Journ. 352.
13 Journ. 4. 9.
63.

Fowey, 12th December, 1698; 16th and 29th November, and 14th Dec. 1699 (a). The house

(a) The first petition of *Shadrack Vincent*, and *Henry Ashurst*, Esqrs. set forth that at the election of members to serve in this parliament for the borough of *Fowey*, in the county of *Cornwall*, the petitioners were duly chosen, by a great majority; yet such was the partiality of *Jonathan Tincomb*, portreeve of *Fowey*, that before the election he declared he would not return the petitioners, though they had never so many votes; but would return one of the sitting members, if he had but four votes; and, accordingly, did falsely return *Sir Bevill Greenville* and *Mr. Vivian*: and being told, "that the petitioners might recover great damages against him for such false return," he said, "he hoped to get £500 by the bargain;" and several other corrupt practices were used in behalf of the sitting members: and, therefore, the petitioners prayed the relief of the house, in the premises.

The second petition of *Shadrack Vincent*, Esq., set forth, that at the last election of burgesses to serve in this parliament, for the borough of *Fowey*, in the county of *Cornwall*, the petitioner stood a candidate, and ought to have been returned a burgess; because a great majority of the legal voters appeared and voted for him; but *Jonathan Tincomb*, portreeve of the said borough, arbitrarily, and contrary to the ancient rights of the said borough, refused to poll the petitioner's voices, who had almost all the qualified voters; and wrongfully returned *Sir Bevill Greenville* and *Thomas Vivian*, Esq., declaring he would not return the petitioner, though he had never so many voices; but that he would return *Sir Bevill Greenville*, if he had but four: and the portreeve being told, that the petitioner might recover damages against him for such his false return, answered, "that he hoped to get £500

being informed that the then petition of *Shadrack Vincent*, Esquire, was different from that which had been presented the last session by *Shadrack Vincent* and *Henry Ashurst*, Esquires: It was ordered, that it should be an instruction to the committee of privileges and elections that they should examine whether the petition presented that session were the same in substance with that which was presented the last session; and that they should report the same, with their opinion therein to the house: and that the committee should do the same before they should proceed upon the merits of the said election.—The committee resolved, that it was their opinion that the petition of *Shadrack Vincent*, Esq., presented to the house of commons that session of parliament, touching the late election for the borough of *F.*, was the same in substance with the petition of Mr. *Vincent* and *Henry Ashurst*, Esq., presented to the house of commons the last session, relating to the said election; and the house agreed.

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1st, 2d, and 4th
class.

Where there
were two peti-
tioners in the
first petition
and in the re-
newed petition
only one,
the latter was
nevertheless
holden suffi-
cient.

Saint Ives, 14th Dec., 1698, and 16th and 29th Nov., 1699.—There having been a petition in which the right of election was stated as

12 Journ. 355.

13 Journ. 2. 9.
62.

by the bargain," and would not return the petitioner, though the majority signed and sealed an indenture for returning him as one of their burgesses; and many other

ill practices were used in behalf of the sitting members; and praying such relief in the premises as the house shall think fit.

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Petitions of
1st, 2d, and 4th
class.

Where the
right of elec-
tion was differ-
ently stated in
the petition
and renewed
petition, the
latter was
holden in-
sufficient.

in the inhabitants not receiving alms (*a*), and a renewed petition in which the right of election was stated as in the inhabitants of full age not receiving alms (*b*). The house, upon similar in-

(*a*) The first petition of several persons, inhabitants within the borough, set forth "that the right of election of members to serve in parliament for the said borough is in the inhabitants not receiving alms; and the petitioners, as such, demanded to be polled at the last election, for Sir *Henry Hobart*; but the mayor, in an arbitrary manner, refused to let them be polled; declaring, that by the late King *James's* charter, the right of election was in the mayor, capital burgesses, and assistants only; and that he would suffer no other persons to be polled, who, with himself, are but ten in number;" and thereupon did make an illegal return of Sir *Charles Windham* and *James Praed*, Esqrs. in great violation of the petitioners' rights; and praying the house to do them justice in the premises, as they shall think fit."

(*b*) The second petition set forth, "that burgesses to serve in parliament were, time out of mind, chosen for the said borough by such of its inhabitants as were of full age and did not receive alms; and at the last election of burgesses, the petitioners, and

divers other qualified voters, appeared and demanded to be polled for Sir *Henry Hobart*, baronet; but the mayor of the said borough arbitrarily refused to let them be polled; and declared that by virtue of the late King *James's* charter, the right of election was solely in the mayor, capital burgesses, and assistants; and that none should be polled but those that voted under that charter; and, thereupon, he hath illegally returned Sir *Charles Windham*, to be one of the said burgesses, in manifest wrong to the ancient rights of the petitioners; and praying that such justice may be done them, as the house shall think fit."

Upon similar information to the house, and instruction to the committee, as in the former cases, the committee resolved, that the petition, &c. presented to the house of commons this session of parliament, touching the late election for the said borough, is not the same in substance with the petition from several inhabitants of the said borough, presented to the house of commons the last session of parliament, relating to the said election.

formation, gave the like instruction to the committee, and on the 11th December, they resolved and reported in effect, that the first petition and renewed petition were not the same in substance; and the house agreed.

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Petitions of
1st, 2d, and 4th
class.

Wigan, 12th Dec. 1698, and 24th Nov. 1699. There was also a petition (*a*), and a renewed petition (*b*).—27th January, 1699, one of the

12 Journ. 352.

13 Journ. 5.

Where the first
petition com-
plained of the

(*a*) The first petition of Sir *Alexander Rigby* set forth, that at the last election of members to serve in parliament for the borough of *Wigan*, in the county of *Lancaster*, many undue practices were used by Sir *Roger Bradshaw* and *Orlando Bridgman*, or their agents, viz. by making persons free, after the dissolution of the last parliament, who were not only strangers to the town, but many dwelling in other counties, and altogether unqualified, purposely to vote for them; and denying others their freedom, both before and after, who were of the corporation, and had a right to, and did claim it, because they would vote for the petitioner; and though he had a sufficient majority, upon casting up of the poll, yet the mayor hath returned the said Mr. *Bridgman*, in wrong to the petitioner; and praying the justice of the house in the premises.

burgesses to serve in this present parliament for the borough of *Wigan*, in the county of *Lancaster*, the petitioner, Sir *Roger Bradshaw*, and *Orlando Bridgman*, Esqrs. stood candidates; when, and before, many undue practices were made use of, by Sir *Roger* and Mr. *Bridgman*, or their agents, as (*inter alia*,) the making persons free after the proclamations for dissolving the last parliament who were strangers to the town, and many of them dwelling in other counties, on purpose to vote for them; and denying others their freedom, who were of the corporation, and had a right, and claimed the same, because they would vote for the petitioner; and yet the petitioner, on casting up the poll, had the majority, and ought to have been returned; but the mayor of the said borough hath returned the said Sir *Roger Bradshaw*, or Mr. *Bridgman*, in wrong to the petitioner; and praying the consideration of the house in the premises.

(*b*) The renewed petition of Sir *Alexander Rigby* set forth, that at the election of

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class.

13 Journ. 146.
Ib. 162.

election of
one of the
members, and
the renewed
petition of
that of both,
the latter was
holden bad.

differences in which was that the former complained only of the election of one of the sitting members, the latter of both. Upon similar information to the house, the same instructions were given to the committee.—31st January, 1699. The committee resolved and reported to the house, in effect, that it was their opinion that the two petitions were not the same in substance; and the house agreeing, it was ordered, that the committee should not proceed any further upon the petition.

15 Journ. 211.
283.

Renewed petition, having signatures not in the original one, held not substantially the same.

Colchester, 11th Dec. and 10th Feb. 1706. There had been a petition and a renewed petition; and the committee reported to the house, under their order (a), that they had examined, whether

(a) 11th December, 1706. Within a few days after the commencement of the session, which was the second of that parliament, the house passed a general order, "that it should be an instruction to the committee of privileges and elections, that before they should proceed to inquire into the merits of any petition, presented to the house that session, touching elections, they should examine whether they were the same in substance with such as were presented the last session of parliament." 15 Journ. 211.

16th Nov. 1709, in the beginning of the second session of the then parliament, it

was ordered, "that it should be an instruction to the committee of privileges and elections, that they should examine whether the petitions to them referred were the same, and signed by the same parties, as those presented the last session of parliament." 16 Journ. 213.

Leominster, 28th March, 1715; 23d February, and 4th March, 1716; 2d and 6th April, and 8th May, 1717.—There was a petition and a renewed petition, and instructions were given to the committee, to examine whether they were the same in substance; but the case went off, *Mr. Gorges*, who it was

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class.

the petition complaining of an undue election of Sir *Thomas Webster*, was the same in substance, with that complaining of the same election, presented in the then last session; that the body of the petition was *verbatim* the same, but there being two fresh signatures to the last petition, instead of those of two other persons who had signed the former, they resolved, "That the petition of *Richard Daniel*, and others, free burgesses of *Colchester*, was not the same in substance with the petition of *Samuel Great*, and others, free burgesses of *Colchester*, presented to the house the last session;" and the house agreeing, the committee were discharged from hearing the matter touching the merits of the election.

Seaford, 7th December, 1790; 1st and 14th February, 1792.—There was a petition, and a renewed petition, by Sir *Godfrey Webster* and

46 Journ. 38.
47 Journ. 12.
381.

alleged ought to have been returned, having failed to put in his qualification, upon notice to him to do so. 18 Journ. 28. 478. 486. 522. 529. 543.

Mr. *Luders* mentions an instance of a renewed petition, containing an additional allegation of bribery and illegal practices, by the sitting member; but this point does not seem to have been touched upon.—*Saltash*, 7th March, 1716. 18 Journ. 494.

Gloucester, 18th October, 1722; 20th January, 26th February, and 11th March, 1723. There was a petition, and a renewed petition, and similar instructions were given to the committee. But it appears, that Sir *Edward Fust* withdrew his petition. 20 Journ. 24, 25. 238. 273. 291.

See also the case of *Glasgow*, 13th May, 1729, where the renewed petition was rejected, *post*, Sect. 10.

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1st, 2d, and 4th
class.

47 Journ. 414.

John Tarleton, Esq., which were referred to a committee, to examine whether they were the same in substance, and if different, in what the difference consisted.—23d February, 1792, the committee reported, That they were the same in substance, except inasmuch as the petition presented in the former session contained the following allegations, (that is to say), “ That several persons who voted for the said *John Sargent* and *Richard Paul Jodrell*, (who were the sitting members) had previously asked, received, and taken money and other reward, and had agreed and contracted for money, gift, and reward, to give their votes in the said election, and had been guilty of other illegal and corrupt practices, by means whereof their votes so given are, and ought to be declared to be void:” But that in the petition presented in the then present session, the allegation, as to bribery and corrupt practices, seemed confined to the sitting members and their agents only, in the following words; (that is to say), “ that at and before the said election, various acts of bribery and other corrupt practices were committed by the sitting members and their agents, and undue influence, of various kinds, were practised by them, whereby your petitioners were prevented from being returned, as they ought to have been.”—And that it further appeared to the committee, that the petition,

presented in the then present session of parliament, was conceived in general terms, whereas the petition presented in the then former session set forth the different allegations more specifically; but that the general allegations contained in the petition last presented were in substance the same with the specific allegations contained in the petition first presented, except as therein mentioned (*a*); and the house resolved accordingly.

(*a*) In the above case, on the 6th Feb., 1792.—Mr. *Froggat*, the agent of the petitioners, presented a petition, stating, in substance, that the petitioners had, in the last session, presented a petition, complaining of an undue election and return, that he, as agent for them, caused a renewed petition, signed by them, to be delivered to the house, but owing to a mistake, the latter was not, in fact, a copy of the petition presented in the last session, which mistake he explained as arising from a wrong draft having accidentally been given to Sir *Godfrey Webster*, and afterwards to Mr. *Tarleton*, to sign; and further stating that Sir *Godfrey Webster* was abroad, and Mr. *Tarleton* was in *Northumberland*, and upon these grounds praying for further time to deliver in another petition on their part. 47 Journ. 28.

14th Feb.—The house was informed that a petition of Sir *Godfrey Webster* and *John Tarleton*, Esqr., being a correct copy of that presented to the house the last session, was ready to be offered to the house; and a motion was made that under the circumstances of the mistake, (which were noticed in the motion) leave should be given to Sir *Godfrey Webster* and *John Tarleton*, to amend their petition by the votes of the house, so as to render the same similar to the petition presented to the house by Sir *G. W.* and *J. T.* Esq. in the last session of parliament. But this motion was withdrawn.—47 Journ. 381.

23d February 1792.—The committee, at the same time, with their report aforementioned, reported also upon Mr. *Froggat's* petition, stating the circumstances of the mistake as they appeared in evidence. 47 Journ. 414.

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47 Journ. 435.

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In such inquiries, with regard to renewed petitions, it has frequently appeared that some of the persons who had signed the original petition, did not also subscribe the renewed one; but this circumstance alone, however great the proportion of the omitted names, provided there be some one same renewing subscriber, will not vitiate the proceeding.

16 Journ. 222.
Renewed petition subscribed by some, but not by all of the original petitioners, sufficient.

Lestwithiel, 23d November, 1709.—It was referred to the committee of elections and privileges to examine whether this, among other petitions referred to them, was the same, and signed by the same parties with that presented the last session. They reported that the petition presented the last session, complaining of the undue election and return of *James Kendall* and *Joseph Addison*, Esqrs., was signed by *William Taprell*, and eighteen other persons, and that the petition, under the same title, presented in the then session was signed by the same eighteen persons, without the said *William Taprell*: The house ordered that they should proceed to hear the matter of the petition, although *William Taprell*, who signed the petition, was dead.

16 Journ. 222.
Same point.

Cirencester, 23d November, 1709.—The same committee, upon the same inquiry, reported that the petition, presented the last session, com-

plaining of the undue election and return of *Charles Cox* and *Allen Bathurst*, Esqrs., was signed by *John Curtis* and *Edward Butler*, and fourteen other persons, and that the petition, under the same title, presented that session, was signed by the same fourteen persons, without the said *John Curtis* and *Edward Butler*. The committee were ordered to proceed to hear the matter of the petition, although the same were not signed by the persons in the report mentioned, who signed the former petition.

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These cases have been followed by those of *Westbury*, 24th January, 1728 (a); *Bridport*, 3d February 1728, and 14th January, 1729 (b); and *Wells*, 27th Nov. 1747, and 13th December, 1748 (c), which have fully established that a re-

21 Journ. 192.
Ib. 203. 399.
25 Journ. 449,
450. 669.
Same point.

(a) Notice being taken in the house, that the petition of *Sir John Lambert*, Bart., presented to the house, complaining of an undue election and return for the borough of *Westbury*, in the county of *Wilts*, is a petition of the last session, renewed, as well in the name of *Anthony Cornish*, Esq., as in the name of the said *Sir John Lambert*, agreeable to the former petition, but is signed by *Sir John Lambert* only; and that *Mr. Cornish* died before the said renewed petition was exhibited; it was ordered, that

it should be an instruction to the committee of privileges and elections that they should proceed only upon so much of the said petition, as related to the said *Sir John Lambert*.

(b) A petition which had been signed by fifteen electors, was renewed by thirteen only: No objection appears to have been made on this head. 21 Journ. 203. 399.

(c) Notice having been taken in the house, that the petition was a petition of the last session, renewed, as well

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newed petition subscribed by some, though not by all of the original petitioners, is sufficient (*a*), at least so far as it may affect the interest of such petitioners as renew their signatures.

It appears, from the following case, that the establishment of select committees has made no alteration with respect to the manner of such inquiries, and also that a committee for this purpose may be appointed at any time before the day for taking the petition into consideration.

1 Doug. 153,
154; and 3
Doug.
Pref. x.
35 Journ. 102,
410. 457.

Morpeth, 8th February, 31st October, and 23d November, 1775.—Mr. *Eyre*, whose election had been set aside, having had liberty to petition

in the name of *George Speke*, Esq. as in the name of *William Piers*, Esq., agreeable to the former petition, but is not now signed by the said Mr. *Speke*.—And the before-mentioned entry in the Journal of the house, of the 24th day of January, 1728, in relation to the petition of Sir *John Lambert*, complaining of an undue election and return for the borough of *Westbury*, in the county of *Wilts*; and the instruction given to the committee of privileges and elections thereupon being read: It was ordered, that it should be an instruction to the com-

mittee of privileges and elections, that they should proceed only upon so much of the said petition of the said Mr. *Piers*, as related to Mr. *Piers*. 25 Journ. 669.

(*a*) *Midhurst*, 3d February, and 23d November, 1803.—The first petition was in the name of Mr. *Holt White*, the unsuccessful candidate, and of certain burgage-holders of the borough. The renewed petition was in that of the candidate only. The petition was tried, and no objection was made to its sufficiency. 2 Peck. 146.

within a fortnight of the time of the decision. He presented such petition, but it was not taken into consideration that session. In the beginning of the following session, he presented a renewed petition, and this was ordered to be taken into consideration on the 26th Jan. following: In the interval before which, the latter petition being thought to contain new allegations, the house was moved (*viz.* on the 23d Nov.), that a committee should be appointed to examine whether the two petitions were the same in substance.—One of the objections urged against the appointment of this committee was, that it was too late; that the difference, (if there really was a substantial difference) between the two petitions, should have been observed when the last was presented; that a day having been fixed for choosing a select committee, the house could no longer take any cognizance of the matter, but that it should be left to the select committee, to discover the supposed variance, and to report it to the house.—After some debate a committee was appointed for the above inquiry (*a*).

The renewing a petition in every session from the time it is presented until it is taken into

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Committee may be appointed to inquire whether renewed petition be the same as original one, at any time before the day of taking the petition into consideration.

(*a*) Nov. 24th.—The very day after this committee was appointed Mr. *Eyre* obtained leave to withdraw his petition. Journ, 459.

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class.

3 Lud. 143.
40 Journ. 85.
98.
Where a petition is presented one session, and renewed in the second, and the third, in which latter it is tried, evidence may be then admitted, to shew that that renewed in that second session was fraudulent.
41 Journ. 152.
S. C. post. 174.

consideration or withdrawn, has been stated to be an essential step. In the following case, a question arose how far the regularity of a renewal in a session in which the petition is not taken into consideration, is necessary, in order to its consideration in a subsequent session.

Honiton, 3d and 7th June, 1784; 16th and 21st Feb. ; 3d March, and 25th April, 1785.—A petition of eight electors, charging the sitting members with bribery, having been presented; but not having been tried in the first session, was renewed in the same form at the commencement of the second. Upon such renewal, four of the above electors petitioned, stating that if they had signed, it was previous to, or at the commencement of the last session; and disavowing their belief of the facts charged, prayed to be permitted to withdraw their names.—On the 27th January, 1786, being the beginning of the third session, the original petition was renewed, signed by only two of the eight who presented the first.

Upon the opening of the case, it was objected on the part of the sitting members, that the petition, when renewed in the second session, had been fraudulently imposed upon the house for a genuine renewed petition; when, in fact, it was only a duplicate of the original petition

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presented at the first meeting of parliament, and signed at that time, and that it was presented afterwards without the authority of the persons signing it. From whence it was to be inferred, that the present petition, depending upon this fraud and irregularity, had not the proper authority of a renewed petition; and therefore ought not to be tried. It was also proposed to prove corrupt conduct in the petitioners, with respect to the petition.

To this it was answered, that even admitting the fact alleged, with respect to the renewal in the second session, it would not affect the trial; which proceeded upon the petition presented to the house in the then session.—That the house, upon the counter-petition, on the first renewal, might have inquired into the facts, but that they could not then be gone into.—The committee resolved, that “the counsel for the sitting member might produce evidence of the invalidity of the petition:” with this explanation, “That the counsel might proceed to shew the irregularity of signing or presenting the second petition,” as distinguished from the charge of corrupt conduct in the petitioners.

Evidence was then gone into, both with regard to the irregularity of presenting the second

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petition, and upon the question of fraud (*a*). The points before the committee being, whether the renewal of the petition were not so irregular, as that the petition could not be entertained; and whether fraud had not been practised upon the house by the petitioners, or on their behalf, and if so, whether it were not a matter sufficient to vitiate and annul the petition itself (*b*).

The committee seem to have considered the sitting members, as having failed in establishing

(*a*) The evidence adduced on the part of the sitting members tended to prove, *first*, that the petition presented to the house in the second session, was signed as a duplicate of that which was presented in the first session, and about the same time, *viz.* in the beginning of that session, in order to be kept as a copy, and not with any view of its being presented in the second session as a renewed petition. And, *secondly*, that whether it were signed as an original petition or a duplicate, the person by whose means it was presented to the house, had therein acted without the authority of the petitioners.

On the part of the petitioners, the evidence went to shew, that as to the two persons, whose petition was then under consideration,

there was no irregularity, and that they had acted consistently in both the renewals of the petition, in order to prosecute it with effect: And in respect of the others, that their signatures to the second petition were made at a time, subsequent at least to the last day of presenting petitions in the first session. Therefore it was argued that they must have been intended for its renewal in the following session, since there could have been no other reason for obtaining their signatures at such a time.

(*b*) It should seem that in the case of a petition by electors, the fraud of some only cannot affect the petition, except as to them, and that in order to defeat it upon the ground of fraud, it must be brought home to each.

those points upon which they founded their objections to the petition: For, after hearing the observations of the counsel, and the evidence on both sides, they resolved, "That the petitioners should proceed to prove the allegations of their petition."

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SECTION 9. *Of withdrawing election petitions.*

AN election petition, when once presented to the house, cannot be withdrawn at the mere pleasure of the parties.

It is necessary that the house, whose jurisdiction in this particular has been left to it by the statutes, should be satisfied, that there is no fraud (*a*), that all parties consent, and that such proceeding is proper, under the circumstances of each case.

(*a*) In the *Middlesex* case, Glanv. 113.—Upon an application to withdraw a petition it was declared to the committee, that the petitioners, being better informed and advised than when their petition was first preferred, desired to withdraw the same, and this was also attested by Mr. Roberts, who presented the petition, and two other

members of the house. The resolution of the committee ran 'that for so much as there appeared no suspicion of fraud or practice for withdrawing the petition, and so good testimony was given to the contrary thereof, the committee thought fit it should be withdrawn as desired.' This was approved and ordered by the house.

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Petitions in
general.

Upon the first establishment of select committees, and for some time afterwards, where there was consent, it was almost a matter of course, that a petition should be permitted to be withdrawn.

33 Journ. 27.
Leave given
on application
to withdraw
petition.

Scarborough, 27th November, 1770.—Mr. *Bell*, one of the members returned upon a double return, and having petitioned, desiring to relinquish his claim to the seat, applied for leave to withdraw his petition. Leave was given, the order for taking it into consideration discharged, and the clerk of the crown was ordered to amend the return accordingly.

33 Journ. 481.
Petition with-
drawn on pe-
titioner dying.

Callington, 17th February, 1772.—The house being informed, that Mr. *Buller*, the petitioner, had died after presenting his petition, discharged the order for taking it into consideration.

34 Journ.
415. 468. 505.

London, 26th Jan. 17th and 28th Feb.—Mr. *Roberts*, who had petitioned against the election and return of the Right Hon. *Frederick Bull*, (then lord mayor) by letter to the speaker, desired leave to withdraw his petition, and the sitting member giving his consent, through a member, who in his place informed the house

thereof; it was ordered that he should be at liberty to do so (a).

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The house, however, afterwards thought it right to make the permission to withdraw a petition a matter of more deliberate consideration in each case, and with this view, on the 18th Feb. 1782, made a standing order, by the effect of which, upon a motion for leave to withdraw a petition complaining of an undue election or return, the consideration and debate is not to be entered upon immediately, but to be adjourned till a further day with an interval of at least three days, between the day of the motion and such further day.

38 Journ. 800.

App. cccxcviii.

(a) In the second *Cricklade* case, 7th February, 1776.—Mr. *Dewar's* petition was sought to be withdrawn, but no sufficient authority from him for the application was shewn, and the ballot took place. 35 Journ. 517.

Ivelchester, 19th February, 1776, the same application was made, but as it was not made until the day on which the petition was ordered to be taken into consideration, the house thought that they were precluded by the stat. 11 Geo. 3. c. 42. § 4. from proceeding to any other business, except the swearing members, previous to reading the order of the day for taking the petition into con-

sideration, and upon that ground the committee was appointed, notwithstanding such application. 35 Journ. 563. 4 Doug. 167.

In the above case of *London*, the application for withdrawing the order was only communicated to the house on the day appointed for taking the petition into consideration; it was, however, by letter, sent to the speaker a day or two before.—See the case of *Abingdon*, 1st February, 1782. The sitting member refused his consent to the withdrawing of the petition, and a motion for discharging the order for taking it into consideration was negatived. Journ. 38. 163.

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general.

Petitions were
forbidden to be
withdrawn, ex-
cept in certain
cases.

But now on
subsequent
matter, arising
and verified on
oath, the house
is authorised
to permit it.

This order applied only to the petitions of the *first* class; it was soon afterwards followed by the stat. 28 Geo. 3. c. 52. § 8. (a) which carried the restriction much further, forbidding the withdrawing any election petition, except so far as it related to the election or return of a member vacating his seat, or dying.

But the law has been again altered by the stat. 53 Geo. 3. c. 71. § 8. (b) which now authorizes the house to permit petitions to be withdrawn upon matter which arises after they have been presented, which is to be specially stated and verified on oath to the satisfaction of the house: And this applies to each of the *five* classes of petitions before-mentioned.

The house will therefore use its discretion as to giving permission to withdraw a petition.

In the following case (c), a petition was permitted by the house to be partially withdrawn, at least as far as the signatures of some of the petitioners.

Honiton, 1784, 1785, and 1786.—Upon the renewal of a petition of certain electors, charging the sitting members with bribery, and alleging

3 Lud. 143.
40 Journ. 85.
98. 527. 550.
575. 881. 886.
S. C. 168.

(a) For this stat. see *ante*,
27.

(b) For this stat. see *ante*,
57.

(c) This case was before
the stat. 28 Geo. 3. c. 52. §
8.

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Where petitioners disavowed the truth of the facts in their petition, and prayed to withdraw their names, leave was given.

that a third candidate, Mr. *Bailey*, had the majority of legal votes (*a*), four of the original petitioners (the first petition having been signed by eight) presented a petition, stating that if the renewed petition had been signed by them, the same was so signed, previous to, or at the commencement of the then last session of parliament; “that being conscious that the facts contained in the said petition (more particularly alluding to them) were, in truth, void of foundation,” they prayed the house to permit their names to be struck off and withdrawn from the petition.

21st Feb., 1785.—The sitting members acquainting the house that they consented, the house discharged a former order for taking the first petition into consideration, “so far as the same purported to be the petition of the four then petitioners;” and gave them leave to withdraw it, as far as it might concern them.

40 Journ. 330.

SECTION 10. *Scotland.*

THE preceding matter of this chapter may be considered as applying generally to elections

(*a*) Mr. *Bailey* had also petitioned, but he died before the beginning of the second session. 3 Lud. 143.

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in *Scotland*: it remains only to subjoin the mention of some cases which have arisen there; and which, together with one or two peculiar provisions of the law, may be taken in aid of what has been already stated.

(See *ante*, § 2.)

With respect to the time within which election petitions must be presented:

As to petitions of the *first* and *second* classes (*a*):

35 Journ. 59.
62.

Petitions left with the clerk of the house on the proper day, but after the rising of the house, rejected.

The following case is confirmatory of the law as before stated (*b*).—*Elgin, Banff, Cullen*, 20th and 23d Dec., 1774. The petition of Mr. *Seton* set forth, that Mr. *Lockart* and Colonel *Morris* were candidates; that the latter was returned; that the former, being very much indisposed, and confined to his house in *London*, was not present at the election, and had since gone to *Lisbon* for the recovery of his health; that Mr. *Lockart*'s friends being convinced that Colonel *Morris*'s election had been brought about by undue influence and unlawful means, dispatched an express to the petitioner with orders to have a petition, in the name of Mr. *Lockart*, presented to the house, but that that authority not being

(*a*) For these classes, see *ante*, 82, 83.

(*b*) See *ante*, 89, 90.

sufficient, the petitioner dispatched another express to *Scotland*, to inform them thereof; and that the last night, about nine o'clock, he had received another express, with a petition from Mr. *Ogilvy*, a constituent member of the borough of *Cullen*, complaining of the election of Colonel *Morris*, which he immediately lodged with the clerk of the house. The evening on which the petition was so lodged, was the evening of the day on which the fortnight expired;—under these circumstances, (together with the distance of the place of election, and the badness of the roads), Mr. *Seton*'s petition prayed that that of Mr. *Ogilvy*, might be received.—After a debate and an adjournment of the question till the next day, a motion, “that the petition of *George Ogilvy*, Esq., referred to in the petition of Mr. *Seton*, having been lodged with the clerk of the house, on Monday, the 19th day of this instant December, after the rising of the house, on that day, and having the next day been offered to be presented to the house, should be then received,” was negatived.

In the following case the petition was received, after the expiration of the fortnight, under the same circumstances as several of those before-mentioned (a).

(a) See *ante*, 91, *et seq.*

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41 Journ. 610.
Petition received after the time, where house is not sitting at the expiration of the time.

Kirkwall, Wick, &c., 25th April, 1786.—The return was delivered into the office of the clerk of the crown on the 8th of April.—The house had not proceeded upon business since the 13th. And the house being informed that the petitioner would have petitioned the house within fourteen days after the return was brought in, if the house had proceeded upon business, since the 13th, the petition was received.—In addition to the cases before stated, as to the time of petitioning in the case of an amended return, the following cases were to the same effect.

46 Journ. 87.
Ib. 126.
In cases of amended returns, the same time allowed for petitioning as upon original returns.

Sutherland, 15th Dec. 1790, and *Lanarkshire*, 17th Dec. 1790.—There having been in each of these an omission in the name of the member chosen and returned, and the same having been amended by order of the house, leave was given, in each, to petition the house, complaining of the election and return within fourteen days then next (*a*).

See *ante*, § 3:

As to who may be petitioners in election petitions:

Petitions of 1st and 2d class to be signed as

With respect to petitions of the *first* and *second* classes (*b*):—Petitions must be signed as before stated, in the corresponding section of

(*a*) See *ante*, 94.

(*b*) For these classes, see *ante*, 82, 83.

this chapter (*a*), (the stat. 28 G. 3. c. 52. § 1 (*b*), applying to all elections.) It is also thereby provided that in cases of elections for districts of burghs, a petition may be proceeded upon, if subscribed by any person or persons claiming to have had a right to vote at the election of any delegate or delegates, or commissioner or commissioners for choosing a burghess for the district.

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before-men-
tioned, except
that in cases
of elections for
districts of
burghs, it is
sufficient if
signed by a de-
legate.

With respect to petitions of the *third* class (*c*): The same statute, by § 3. (*d*), makes a similar provision.

So in petitions
of 3d class.

With respect to objections to petitioners in election petitions not appearing upon the face of the petition:

See ante, § 5.

As to petitions of the *first*, *second*, and *third* classes (*e*):—The following case may be added to those already given (*f*).

Stirling, &c. 5th and 9th March, 1713, and 6th May, 1714.—The house being informed that the petition against the election and return was not

17 Journ. 485.
490. 618.
Preliminary
inquiry as to
signatures.
If signatures

(*a*) See ante, 101, 102.

(*d*) For this stat. see ante, 24.

(*b*) For this stat. see ante, 23.

(*e*) For these classes see ante, 82, 83.

(*c*) For this class see ante, 83.

(*f*) See ante, 113, et seq.

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not authentic,
petition will
not go on.

signed by the petitioner, instructed the committee that, before they should proceed upon the petition, they should examine into the manner of signing the same. It appearing, upon inquiry by them, that the petitioner did not sign the petition himself, the committee were discharged from proceeding thereupon (a).

See ante, § 6.

As to the degree of minuteness required in the allegations of election petitions :

Petitions in
general.

This subject was much agitated in the following case. In principle it seems equally applicable to petitions of all classes.

41 Journ. 155.
1 Lud. 406,
407.

The petition
went to im-
peach certain
specified votes.
Others not al-
lowed to be
questioned,
without a
positive alle-
gation that
there were
others that
were bad.

County of *Nairn*, 27th January, 1786.—The petition of certain freeholders, after stating objections to certain persons who had voted for Mr. *Brodie*, the sitting member, concluded,—“ And by these means the said *Alexander Brodie*, Esq. was returned instead of the said *George Campbell*, Esq. who had in his favour the votes of a majority of the legal electors present at the said meeting: And further, the return of the said *Alexander Brodie* was brought about by various illegal and unwarrantable acts and proceedings, and the petitioners, therefore, think themselves much aggrieved, and apprehend that the said election

(a) See also the case of *Glasgow*, post, 183.

and return is an undue election and return," &c.
 —The vote of *A. Rose*, whose name was not among those pointed out as questionable by the petition, was objected to, on the ground of undue influence. On the part of the sitting members it was insisted, that the petitioners had no right, by the terms of their petition, to enter upon any objection to his vote.—After hearing the question argued, the committee decided, "That, under the particular circumstances of the petition, the counsel for the petitioners were not at liberty to enter upon the vote of *A. Rose*."

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As to supplemental election petitions:

See ante, § 7.

With respect to petitions in general:—The following was a case of a supplemental petition.

Petitions in general.

Kirkwall, &c. 28th January, 1785.—After the petition of Mr. *Sinclair* had been presented, complaining of the undue election and return of Mr. *Fox*, a supplemental petition was added, setting forth, "That since the petitioner had complained to the house of Mr. *Fox*'s election, he had found that it took place in consequence of certain corrupt agreements, and other illegal practices by his friends and agents; and praying that the same might be taken into consideration together with his former petition." The matter of the two petitions were heard together.

40 Journ. 461.
 3 Lud. 250.
 On discovery of new matter, after petition presented, a supplemental petition may be presented.

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See *ante* § 8.
(*Ib.*)

As to renewing election petitions :

With respect to petitions of the *first* or *second* classes (*a*):

* 35 Journ. 38.
437.
3 Doug.
Pref. vii.
Where petitioner, at the time when his petition should have been renewed, was abroad on his majesty's service, an application, on his part, for further time, was refused.

Dumbarton, 12th December, 1774, and 10th November, 1775.—The Honorable *George Keith Elphinstone* presented a petition against the election and return of Sir *Archibald Edmonstone*. The petition was not tried in the first session. Mr. *Elphinstone*, being a captain in the navy, went abroad upon his duty before the commencement of the next session.

The standing order, limiting the time for receiving petitions, was made on the 27th October, 1775. On the 10th of November, the last day of the fortnight, Mr. *Elphinstone* was not returned, but a petition from Mr. *Seton*, who had been his agent upon the former occasion, was offered to be presented to the house, and he attended to give information, touching Mr. *Elphinstone's* intention of renewing his petition, and the time of his going to sea, as well as his being at that time abroad on his majesty's service. The house declined to examine Mr. *Seton* (*b*); and a motion, that “ Mr. *Elphinstone* should be allowed four-

(*a*) For these classes, see *ante*, 82, 83.

(*b*) Mr. *Seton* did not produce any authority from Cap-

tain *Elphinstone* to appear as his agent, or to make application for a longer time in his name.

teen days more, from that day, to present his petition to the house," was negatived.

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As to petitions in general:

Glasgow, Dumbarton, &c., 30th March, and 10th April, 1728;—petitions were presented by different electors against the election and return.—4th Feb., renewed petitions were presented.—Upon information to the house that the latter petitions were different from the former, it was referred to the committee of privileges and elections to examine, whether the petitions were the same in substance with those presented the then last session, and signed by the same persons; and also to inquire into the manner of obtaining and signing the said petitions; and to make report of their examination and inquiry, with their opinion thereupon, to the house, before they proceeded to hear the merits of the said election.—13th May, 1729. It appeared, upon the inquiry, that a great number of persons had signed the renewed petitions, who had not signed the former ones, and also, that there were alterations in the body of the petitions, whereupon it was resolved that the petitions presented that session were not the same in substance with those presented the former session, and they were rejected (*a*).

21 Journ. 108.
128. 207. 375.
Renewed petition, having signatures not in the original one, &c.

(*a*) See *ante*, 159. *et seq.*

Sect. 11.

SECTION 11. *Ireland.**App. ccciv.*

App. cccxxxviii.
Rules as to
petitions re-
specting elec-
tions in Great
Britain gene-
rally appli-
cable to those
for places in
Ireland.

UNDER the general provision of the fourth article of the Act of Union, and the before-mentioned (*a*) adoption, by the stat. 42 Geo. 3. c. 106. § 1. of all the rules, regulations, authorities, and powers given and prescribed by acts of the parliament of *Great Britain* in force at the time of passing such act of union, the matter of the foregoing sections is, for the most part, to be regarded as applying likewise with regard to petitions in respect of elections for places in *Ireland*. Some little addition, however, to what has been mentioned is requisite.

See *ante*, § 2.

As to the time within which election petitions must be presented:

Petitions of
1st and 2d
class.

With respect to petitions of the *first* and *second* classes (*b*):

Petitions to
be presented
within fourteen
days, after
order of the
house, or after
new return

A standing order which is repeated at the commencement of every session (*c*), gives the same limitation of time for presenting petitions, as before-mentioned in cases relating to elections

(*a*) See *ante*, 77.(*c*) For this order, see *App.*

(*b*) For these classes, see *dcxiv.* and *ante*, 88.
ante, 82, 83.

in *Great Britain*, viz. that of fourteen days after the making of such order, or within fourteen days after any new return shall have been brought into the office of the clerk of the crown of *Great Britain* (a). The petition may either be presented to the house within such time, or may be lodged in the office of the clerk of the crown in *Ireland*.—In which latter case such clerk of the crown is (also by a standing order of the house) forthwith to make a copy of the petition presented in that office, and is immediately thereupon to transmit the original petition (in the method used in conveying returns) to the speaker of the house of commons to be by him laid before the house.

Sect. 11.

Petitions of
1st and 2d
class.

brought into
crown office;
may be pre-
sented to the
house, or
lodged in the
office of the
clerk of the
crown in Ire-
land.

App. DCIV.

In the latter
case, clerk of
the crown to
keep a copy,
and transmit
the original to
the speaker.

See ante, 1 vol.
839.

It will be remembered that returns are made to the crown office in *Ireland* in the first instance.—The above order further directs, that in case no such petition shall have been lodged in such office within the limited time, the clerk of the crown shall forthwith transmit a certificate in the like manner to the speaker, signed by himself or his deputy, specifying the time when the return was made, and that no such petition had been lodged in his office, previous to the date of such certificate.

See ante, 1 vol.
839.

If no petition
be lodged in
the office of the
clerk of the
crown in Ire-
land, he is to
transmit a cer-
tificate to the
speaker, speci-
fying the time
of the return,
and that no
petition had
been lodged.

(a) The two orders are not quite in the same words.

Sect. 11.

Petitions of
1st and 2d
class.

63 Journ. 150.

In case of an
amended re-
turn, the same
time given to
petition as
upon the ori-
ginal return.

68 Journ. 606.
Same point.

In addition to the cases as to the time for petitioning where returns have been amended:

Tralee, 7th March, 1808, was the case of a return amended by order of the house, by rectifying the name of the member returned, in which there had been a mistake:—Leave was given to petition within fourteen days, then next.

See *ante*, 3.

Tralee, 28th June, 1813.—Under similar circumstances, the like leave was given (*a*).

As to who may be petitioners in election petitions:

See *ante*, § 103.

With respect to petitions in general:—The rule that a petitioner must prove himself entitled to the character in which he petitions, was confirmed by the language of the resolutions in the following case, though under the particular circumstances there, it was not enforced to the full extent.

1 Peck. 217.

233.

Character of
petitioner to
be proved in
first instance.

Waterford, 1803.—Upon the opening the case for the petitioner, Sir *John Newport*, who petitioned as a candidate, it was insisted, upon

(*a*) See *ante*, 94.

the part of the sitting member, that the production of the poll was necessary, before any further proceedings. It appeared that the commissioners had not sent over the poll-book, but that it had been regularly offered to them in evidence, and that they had extracted such parts of it in their minutes, as applied to the particular case before them. The committee, after argument upon the point, and after deliberation, resolved, that the production of the poll was necessary; but that the omission not being imputable to the petitioner, it should not be permitted to destroy or suspend the proceedings (*a*).

Sect. 11.

Petitions of 1st, 2d, and 4th class.

Poll book must be produced to prove the fact of being a candidate;

but under particular circumstances the rule was released.

With respect to the form of election petitions, and the degree of minuteness required in the allegations therein: (See *ante*, § 6.)

As to petitions of the *first*, *second*, and *fourth* classes of petitions (*b*):

The stat. 42 Geo. 3. c. 106. § 2, enacts, that no such petition shall be proceeded upon by the house of commons, unless the same shall state all and every the several matters and things of and concerning which the petitioner or petitioners is, or are desirous of complaining, and

App. cccxxxix.
Petition must state the whole complaint.

(*a*) See *ante*, 105. (*b*) For these classes, see *ante*, 82, 83.

Sect. 11.

Petitions of
1st, 2d, and 4th
class.

No evidence
admissible
to matter not
contained in
petition.

to which he or they purpose to call and examine witnesses. And that no witnesses shall be called or examined on his or their behalf, either before the select committee, or before the commissioners in *Ireland*, (whose appointment will presently be explained) to any matter or thing not contained or set forth in the petition.

See *ante*, § 9.

As to withdrawing of election petitions :

A proceeding in effect, though not in form, in the nature of those before mentioned under this head, took place in the following case :

70 Journ. 339.
342. 408.
Petition,
praying the
discontinuance
of proceedings
upon an elec-
tion petition.

Downpatrick, 30th and 31st May, and 20th June, 1815. Mr. *Ruthven*, who was a petitioner against the return of Lord *Glerawley*, afterwards petitioned, stating his former petition, and that a committee had been appointed to try the merits of the same, and that he was not desirous of prosecuting it; and that, by and with the consent of the sitting member, he prayed the house to permit all further proceedings upon the petition to be discontinued.

Upon which a bill was passed to enable the committee to re-assemble, and to suspend the transmission of the warrants and other proceedings for the appointment of commissioners

to examine witnesses in *Ireland*. And the sitting member was afterwards, by such committee, reported to the house to be duly elected.

Sect. 11.

Petitions of
1st, 2d, and 4th
class.

CHAPTER III.

OF THE RECOGNIZANCES RELATING TO ELECTION PETITIONS.

SECTION 1. *In what cases recognizances are required of petitioners, to what amount, and under what conditions.*

SECTION 2. *Of the time within which recognizances are to be entered into, and herein of enlarging such time.*

SECTION 3. *Of the proceedings upon entering into recognizances, and herein of the examination of the sureties.*

SECTION 4. *Of the omission to enter into recognizances, or to comply with the terms thereof.*

SECTION 5. *Scotland.*

SECTION 6. *Ireland.*

AN election petition having been presented, if it be of any of those classes wherein, as will be seen, the law requires it, recognizances must be entered into within the time, and in the manner which is about to be stated, and the terms thereof must be duly complied with.

Sect. 1.

With respect to petitions of the *first, second,* and *third* classes (*a*):

No proceeding to be had upon petitions of the 1st, 2d, and 3d classes, unless the recognizance, required by 28 Geo. 3. c. 52. be entered into by petitioner or petitioners, or some or one of them, within fourteen days after petition presented, or further time limited by the house.

The stat. 28 Geo. 3. c. 52. § 5 (*b*), directs that no proceeding shall be had upon any petition by virtue of the acts of 10 Geo. 3. c. 16 (*c*); 11 Geo. 3. c. 42 (*d*); 14 Geo. 3. c. 15 (*e*); 25 Geo. 3. c. 84 (*f*), or that act, unless the person or persons subscribing the same, or some one or more of them, shall within fourteen days after it shall have been presented, or within such further time as shall be limited by the house, personally enter into a recognizance to the king, according to the form in the act (*g*), in the sum of £200, with two sufficient sureties in the sum of £100 each.

Conditions of recognizance.

The condition of this recognizance is, to appear before the house at the time for taking the petition into consideration, and also before the select committee, when appointed for the trial of the same, and to renew the petition in every subsequent session, until a select committee shall have been appointed for the trial, or until the petition shall have been withdrawn by permission of the house.

(*a*) For these classes, see *ante*, 82, 83.

(*b*) For this stat. see *ante*, 25.

(*c*) For this stat. see *ante*, 6.

(*d*) For this stat. see *ante*, 16.

(*e*) For this stat. see *ante*, 19.

(*f*) For this stat. see *ante*, 19.

(*g*) For the form, see *ante*, 38.

Another recognizance is also required in the same cases, under the stat. 53 Geo. 3. c. 71. § 3. (*a*) which, in order to ensure the more punctual payment of costs, expenses, and fees, which may become due to witnesses, officers of the house, and parties, by reason of the trial of controverted elections, directs, that no proceeding shall be had on any petition by virtue of any act concerning the trial of controverted elections and returns, unless the person or persons subscribing the same, or some one or more of them, shall, within fourteen days after the same have been presented, or within such further time as shall be limited by the house, personally enter into a recognizance to the king according to the form (*b*) in the act, in the sum of £1000, with two sufficient sureties in the sum of £500 each.

Sect. 1.

Petitions of 1st, 2d, and 3d class.

Nor unless recognizance required by 53 Geo. 3. c. 71.

be also entered into by petitioner or petitioners, or some or one of them, within fourteen days after petition presented, or further time to be limited by the house.

Condition of recognizance.

The condition of this recognizance is for the payment of all costs, expenses, and fees, which shall become due to any witness summoned in behalf of such person or persons subscribing the petition, or to any clerk or officer of the house upon the trial of the petition, or to the party appearing before the house or committee, in opposition to the petition, in case such person or persons shall fail to appear before the house,

(*a*) For this stat. see *ante*, 55. (*b*) For the form, see *ante*, 63.

Sect. 1.

Petitions of
1st, 2d, and 3d
class.

at such time or times as shall be fixed by the house for taking the same into consideration; or in case the petition shall be withdrawn by permission of the house, or in case the committee shall report to the house, that the petition appears to them to be frivolous or vexatious.

There is no
objection to
the same per-
sons being
sureties in
both recog-
nizances.

With respect to the sureties who may enter into these recognizances, their sufficiency is by law made the subject of a particular inquiry, in the manner which will presently appear (a). It may be observed here, that there is no objection to the same persons becoming sureties in the recognizances under both acts, if they are otherwise sufficient; the stat. 53 Geo. 3. c. 71. § 6 (b), having an express provision to that effect.

4. & 5. As to petitions of the *fourth* (c) and *fifth* classes (d):

In petitions
of 4th and 5th
class.
Recognizances
not required.

The rules and regulations whereby recognizances are required, as above stated, and certain persons are made liable to the payment of costs, are by the statutes 28 Geo. 3. c. 52. § 32 (e), and 53 Geo. 3. c. 71. § 14 (f) not to be

(a) See *post*, 200.

(b) For this stat. see *ante*, 84.

56.

(c) For this class, see *ante*,
84.

(d) For this class, see *ante*,

84.

(e) For this stat. see *ante*, 38.

(f) For this stat. see *ante*,

60.

construed to apply to any petition presented in pursuance of the former of those acts, and relating solely to any question or questions respecting the right of election, or of appointing a returning officer or officers.

Sect. 1.

Petitions of 4th
and 5th class.

SECTION 2. *Of the time within which recognizances are to be entered into, and herein of enlarging such time.*

1, 2, & 3. AS to petitions of the *first, second,* and *third* classes (a):

In petitions of
1st, 2d, and 3d
class.

The time allowed for entering into the recognizances required is the same under both the acts; the 28 Geo. 3. c. 52. § 5 (b), and the 53 Geo. 3. c. 71. § 3 (c), alike requiring that they should be entered into within fourteen days after presenting the petition, or such further time as shall be limited by the house.

Recognizances
under the
28 Geo. 3. c. 52.
and the 53
Geo. 3. c. 71. to
be entered into
within four-
teen days after
petition pre-
sented.

According to the general rule of law, in the computation of these fourteen days, the day on which the petition is presented would be included (d).

In computing
the fourteen
days, that of
presenting the
petition is in-
cluded.

(a) For these classes, see
ante, 82, 83.

(c) For this stat. see *ante*,
55.

(b) For this stat. see *ante*,
25.

(d) See *ante*, 89, (n.)

Sect. 2.

Petitions of
1st, 2d, and 3d
class.

If recogni-
zances cannot
be entered
into in proper
time, parties
having suffi-
cient ground,
may apply to
enlarge the
time.

Discretionary
in the house,
whether to
grant this on
matter spe-
cially stated
and verified to
their satisfac-
tion, under

28 Geo. 3. c. 52.
and so on mat-
ter verified on
oath under 53
Geo. 3. c. 71.

If there be any sufficient reason why the recognizances required cannot be entered into within the regular time, the parties may apply by petition (*a*) to the house, to enlarge the time for so doing. This indulgence is in their discretion, under the clauses just mentioned of both the statutes of the 28 and 53 Geo. 3; the former of these (*b*) allowing it, (if the house shall see cause,) upon matter specially stated, and verified to their satisfaction; and the latter (*c*) allowing it, upon matter specially stated and verified *on oath* to the satisfaction of the house.

As each case must stand upon its own grounds in this particular, there cannot be any general rule as to the granting or refusing this application.

It may be of use, however, to advert to some instances, in which the question as to enlarging the time has been brought under the consideration of the house, and to observe their decisions thereupon.

Plymouth, 17th December, 1790.—The house being informed that *John Macbride*, Esq., who

(*a*) See a petition for enlarging the time for entering into recognizances. *App.* cccxcvi.

(*b*) For this stat. see *ante*, 25.

(*c*) For this stat. see *ante*, 55.

46 Journ. 125.
Where peti-
tioner was
abroad on his

had petitioned on the 3d December against the election and return, was abroad, commanding one of his majesty's ships of war, and that it was uncertain when he would return: the stat. 28 Geo. 3. c. 52. § 5, was read, and it was ordered, "that the time allowed for *John Macbride*, Esq. to enter into the said recognizance should be enlarged until the 16th January then next (a)."

Sect. 2.

Petitions of 1st, 2d, and 3d class.

majesty's service, the time for his entering into recognizance was enlarged.

Seaford, 23d December, 1790.—The agent for Sir *Godfrey Webster* and Mr. *Tarleton*, who had petitioned against the election and return, stated by petition to the house, that the time for the petitioners entering into the recognizance would expire on the following day; but that the examiners, who had entered into the examination of the sureties, had adjourned it till that day.—The time was enlarged till the 29th December.

46 Journ. 136.

Where examiners adjourned examination of sureties, till the day on which the time would expire, the time was enlarged.

Shaftesbury, 29th December, 1790.—The petition of Mr. *Mortimer* against the return, was presented 10th December.—The speaker having informed the house that the recognizances had not been entered into, but that this was occasioned by his own indisposition, the time was enlarged for thirty days.

46 Journ. 137.

Where recognizance was delayed on account of the speaker's illness, the time was enlarged.

(a) The time was afterwards limited to thirty days after Captain *Macbride*'s return to this country, by an act of parliament passed for that purpose, viz. the stat. 31 Geo. 3. c. 3.—See also the cases in Sect. 5 and 6.

Sect. 2.

Petitions of
1st, 2d, and 3d
class.

In the above cases wherein the time was enlarged, there were no *laches* on the part of the petitioners; but where there has been negligence on the part of the petitioner, whether it has arisen from ignorance of the law or not, the house has refused to enlarge it; as in instances where there was a delay by the petitioner, in instructing his agents, or where he had continued so long abroad, (not being there in the service of his country,) as to make it impossible for him to give the proper notice to the sitting members of the intended sureties.

58 Journ. 110.
Where petitioner delayed his instructions to his agent, so as to make it too late to him to give the proper notice; the house refused to enlarge the time.

Tregony, 21st Dec. 1802 (a).—The agents for Mr. *Williams*, who had petitioned against the return of the Marquis of *Blandford* and Sir *Charles Cockerell*, petitioned, alleging that they had received their instructions respecting the recognizance on the 18th, that they had made every effort in their power respecting the business (the particulars of which they stated); and also, that the examiners had deferred the examination of the sureties for want of sufficient notice, and praying that the leave for entering into recognizance might be enlarged: The grounds of this application were considered as insufficient; and a motion for enlarging the time for entering into recognizance was negatived.

(a) See also the case of *Drogheda*, 10 Dec. 1802, *post.* 16.

Seaford, 21st Dec. 1802.—Mr. *Concannon* petitioned the house in like manner, stating that he had been abroad, and that on being informed that it was necessary for him to enter into a recognizance, he had made efforts to return in time, but that he had been detained by contrary winds; and that he had only arrived in town on the night of the 20th, and that he was ignorant that a notice of two days was required to be given to the sitting members of the sureties which were to be offered; and praying, under these circumstances, for further time: This application was refused.

Sect. 2.

Petitions of 1st, 2d, and 3d class.

58 Journ. 110. Where petitioner stayed so long abroad as to prevent his giving the proper notice, of the necessity of which he alleged that he had been ignorant; the house refused to enlarge the time.

Milborne Port, 16th January, 1807.—Mr. *Davison*, the petitioner against the return of Lord *Paget* and Mr. *Leycester*, (the consideration of whose petition was appointed for the 10th of March), petitioned, stating that he had attended the day before his latter petition, with his sureties in the committee room, appointed for taking and examining them, with the intention of perfecting the same, but that he was not permitted so to do, because the notice required had not been given to the sitting members, or their agents; that the omission of such notice was occasioned by the petitioner not being by himself or his agent acquainted with the standing order of the house which makes such notice necessary, and praying

62 Journ. 68. Where petitioner omitted to give the notice, from ignorance of the law, the house refused to enlarge the time.

Sect. 2.

Petitions of
1st, 2d, and 3d
class.

that the time for entering into recognizance might be enlarged. The matter of this petition was verified by a member present. A motion that the time should be enlarged, was negatived.

62 Journ. 759.
Same point.

Lancaster, 22d July, 1807.—A similar application was made under circumstances of the same nature, and the like motion was negatived.

Under neither of the above statutes can the time for entering into recognizances be enlarged more than once, or for any number of days exceeding thirty, a restriction to this effect being respectively made by the two clauses last mentioned (*a*).

Where time for entering into recognizances is enlarged, the consideration of the petition may be postponed, but no petition is to be taken into consideration until recognizances entered into and received by the speaker.

If the house shall come to the determination, that sufficient grounds have been shewn to induce them to enlarge the time for entering into recognizances, each of the same clauses directs that the order for taking the petition into consideration, is, if necessary, to be postponed, so that no petition be taken into consideration, till the recognizances shall have been entered into, and received by the speaker.

It need hardly be mentioned, that if parties are willing to enter into recognizances before

(*a*) See *ante*, 194.

the expiration of the fourteen days, the consideration of the petition may be proportionably accelerated.

Sect. 2.

Petitions of
1st, 2d, and 3d
class.

Colchester, 16th February, 1789.—The petition of Mr. *Jackson* was presented, and ordered to be taken into consideration, on the 24th of February, being the day fixed for the consideration of Mr. *Tierney's* petition against the same return, presented February the 7th: Notice was taken, that the statute allowed fourteen days for the recognizance to be entered into: but the house being informed, that the petitioner would undertake to enter into his recognizance before the said 24th day of February, the order for the consideration of the petitions continued to stand for that day.

44 Journ. 116,
117.

Petitioner consenting to enter into recognizance before the time, the consideration of his petition may be advanced.

Great Grimsby, 6th of December, 1802.—There was a similar proceeding, as to the petition of Mr. *Sewell*.

58 Journ. 56.

SECTION 3. *Of proceedings upon entering into recognizances, and herein of the examination of the sureties.*

1, 2, and 3. As to petitions of the *first*, *second*, and *third* classes (a):

(a) For these classes, see *ante*, 82, 83.

Sect. 3.

Petitions of
1st, 2d, and 3d
class.

Recognizances
under 28 Geo.
3. c. 52. and 53
Geo. 3. c. 71.
to be entered
into before the
speaker.

The names of
intended sure-
ties are to be
delivered to the
clerk of the
house of com-
mons eight
days before en-
tering into re-
cognizances.

Speaker to
judge of the
sufficiency of
sureties, in re-
cognizances
under the 28
Geo. 3. c. 52.
and 53 Geo. 3.
c. 71. on the
report of two
(of certain)
persons, to

The recognizances, both under the stat. 28 Geo. 3. c. 52. and the 53 Geo. 3. c. 71. are to be entered into by petitioners and their sureties before the speaker. By the former act, § 6 (a), he is authorized and empowered to take the recognizances thereby required; and by the latter, § 5 (b), the recognizance under that act is to be entered into, in the manner enacted in the former act.

With a view to ascertaining the sufficiency of the sureties proposed, the petitioner or petitioners, or his or their agents, must, by the stat. 53 Geo. 3. c. 71. § 4. and 6 (c), eight days at least before entering into such recognizances, deliver in writing to the clerk of the house of commons the names of the sureties proposed; which names are to be entered in a book to be kept by such clerk in his office, open to the inspection of all parties concerned.

By the stat. 28 Geo. 3. c. 52. § 6. the sufficiency of the sureties, in recognizances under that act, is to be allowed and judged of by the speaker, on the report of two persons to be appointed by him to examine the same; of which two persons the clerk or clerk assistant of the

(a) For this stat. see *ante*, 26. (c) See *ib.*

(b) For this stat. see *ante*, 56.

house is always to be one; and either a master in chancery, a clerk in the court of king's bench, a prothonotary in the court of common pleas, or a clerk in the court of exchequer, is to be the other (such other not being a member of the house of commons.) The two persons thus appointed, being thereby authorized and required to examine the same, and to report their judgment thereupon; and being entitled for so doing to such fees as shall from time to time be fixed by any resolution of the house (*a*). This pro-

Sect. 3.

Petitions of
1st, 2d, and 3d
class.

be appointed
examiners.

Examiners en-
titled to cer-
tain fees.

(*a*) 2d July, 1813.—A committee which had been appointed to consider of the fees payable to examiners of election recognizances and bills of costs; and to whom the reports made on the 11th February, 1789, and the 20th May, 1791, from committees appointed to consider of the act 28 Geo. 3. c. 52; and also an act of the then session (53 Geo. 3. c. 71.), were referred, reported that they had examined the matters to them referred, and had come to a resolution thereupon; and had also agreed to a table of fees, and which it was resolved by the house should be demanded and taken.—The table of fees to be demanded and taken by the examiners, and other persons, for their attendance and trouble respecting such recognizances, and the taxation of all costs, fees, and expenses, under the authority of the said acts (and which it was resolved by the house should be demanded and taken), is as follows:

To each of the said examiners, for his pains and trouble respecting the examination of the sufficiency of the sureties in any recognizances, or respecting the taxation of any bill of costs, expenses, or fees, upon which an order of reference shall have been made by Mr. Speaker to such examiners, for the first day of attendance, the sum of three guineas	3	3	0
For every subsequent attendance the sum of two guineas	2	2	0

Sect. 3.

Petitions of
1st, 2d, and 3d
class.

vision also, by the effect of the 53 Geo. 3. c. 71. § 5 (*a*), is adopted in cases of recognizances under that act, that clause directing that the sufficiency of sureties, in recognizances under that act, shall be allowed and judged of, in the manner, and under the regulations enacted under the former act, with respect to the recognizances therein.

Examiners ap-
pointed by the
speaker.

In compliance with the above provision, examiners of the sureties are appointed in each instance by the speaker, under his hand (*b*), with whom it rests, to make inquiry, with respect to sureties proposed for recognizances under either act.

It becomes their duty, in conformity to a reso-

To the speaker's secretary, for his pains and trouble respecting every such recognizance, and all matters relating thereto, the sum of twenty shillings	1	0	0
To the speaker's secretary, for his pains and trouble respecting the taxation of every such bill, the sum of one pound six shillings and eightpence	1	6	8
To the clerk, who shall be appointed to attend the said examiners, for his pains and trouble on every attendance, the sum of two guineas	2	2	0

Memorandum. That if orders of reference are made upon two or more bills of costs, fees, or expenses arising upon the same petition, each day of meeting shall be considered as one attendance. 68 Journ. 634.

(*a*) For this stat. see *ante*
56.

(*b*) For a form of such ap-
pointment, see App. cccxcii.

lution of the house of commons of the 11th Feb. 1789 (*a*), by virtue of the speaker's order, and upon application of the petitioner's agent to the clerk or clerk assistant of the house, for a day and an hour for examination of the sufficiency of the sureties, which, by the same order, and also by that of 2d July, 1813 (*b*), is to take place in one of the committee-rooms belonging to the house of commons: such examiners being required by the latter resolution to give due notice in writing, to be hung up in the lobby of the house of commons, of the time and place of such intended examination.

Sect. 3.

Petitions of
1st, 2d, and 3d
class.

They fix a day
and hour for
the examining
the sufficiency
of the sureties.

This examina-
tion to be in
one of the com-
mittee-rooms
belonging to
the house.

(*a*) For this resolution, see *App.* cccxciii.

(*b*) 2d July, 1813.—It was reported by a committee, to whom the reports of the 11th February, 1789, and the 20th May, 1791, from committees appointed to consider the act of the 28 Geo. 3; and also the act 53 Geo. 3. c. 71. had been referred (*inter alia*), that they had come to a resolution thereupon, viz.

Resolved, "That it is the opinion of this committee, that for the due execution of an act, &c. (28 Geo. 3. c. 52), and of an act, &c. (53 Geo. 3. c. 71), so far as the same respect the recognizances thereby required to be entered into by any person having presented a peti-

tion to this house, complain-
ing of an undue election or
return, or of the insufficiency
of a return, it is expedient
that the examiners of sure-
ties to be appointed by virtue
of the said acts, should attend
for the purpose of examining
the sufficiency of any surety
or sureties to be named in
such recognizance, in one of
the committee-rooms belong-
ing to this house, at such time
or times within the time limit-
ed by the said acts, as shall
be appointed by such exa-
miners; and that such exa-
miners do give due notice in
writing, to be hung up in the
lobby of the house of com-
mons, of the time and place
of such intended examina-
tion." 68 Journ. 634.

Sect. 3.

Petitions of
1st, 2d, and 3d
class.

Petitioner to
give notice of
time and place
of examina-
tion, and of
the names and
places of abode
of sureties to
sitting mem-
ber or mem-
bers, &c.

The examiners having made this appointment, the petitioner is, in conformity to the same resolution of the house, to give notice (*a*) of the time and place of this examination, together with the names, additions, and places of abode of the sureties, to the sitting member or members, whose election or return is complained of by the petition, or their known agent or agents, and to every other person or persons to whom the speaker shall have given notice to attend at the time when the petition is ordered to be taken into consideration, or their known agent or agents.

Two whole
days to inter-
vene between
days of notice
and of exam-
ination.

This notice is, according to the practice of the house, to be so given, as that two whole days may intervene between the day of serving the notice and the day of the examination.

Where peti-
tioner cannot
find and serve
sitting mem-
ber, or his
agent, with
notice, and

There having been in some instances a difficulty in serving this notice (*b*), it was provided by a resolution of the house of commons of the 16th July, 1807 (*c*), that if the petitioner shall not have been

(*a*) For a form of this notice, see *App.* cccxciv.

(*b*) See the case of *Dumfries*, *post*, 213.

(*c*) 16th July, 1807.—The resolution of the 11th Feb. 1789, *ante*, 203, having been referred to a committee, they

came to a resolution, which was reported and agreed to by the house, viz.

Resolved, “That so far as the said resolution respects the notice required to be given by the petitioner to the sitting member or mem-

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Petitions of
1st, 2d, and 3d
class.

shall have obtained an enlargement of the time for entering into recognizance, he may give notice in writing seven days before examination to clerk of the house, who is to enter it in a book, for inspection of parties concerned.

At the examination, affidavits to be produced or made of the proper notices, and of sureties being worth the sum required, &c.

able to find and serve sitting member, or his known agent or agents, and if he shall thereupon have obtained an order from the house enlarging the time for entering into recognizance, it shall be sufficient for the petitioner to give such notice in writing, seven days at least previous to such examination, to the clerk of the house of commons, who is to enter the same in a book to be kept for that purpose, which is to be open for the inspection of all parties concerned.

At the time appointed for the examination of the sureties, affidavits are produced to the sureties, or made by them of the service of the proper notices (*a*), and of the sureties being worth the sum required for the recognizance (*b*); and objections which may be made to their sufficiency

bers, or their known agent or agents, of the time and place of the intended examination of the surety or sureties to be named in any recognizance, and of the names, additions, and places of abode of such sureties, if the petitioner shall not have been able to find and serve the sitting member, or his known agent or agents; and if he shall thereupon have obtained an order from the house enlarging the time for his entering into his recognizance, it shall be sufficient for the

petitioner to give the said notice in writing, seven days at least previous to such examination, to the clerk of the house of commons, who shall enter the same in a book to be kept for that purpose, which shall be open to the inspection of all persons concerned." 62 Journ. 721.

(*a*) For a form of such affidavits, see *App.* cccxciv.

(*b*) For a form of an affidavit of justification upon entering into recognizance, see *App.* cccxcv.

Sect. 3.

Petitions of
1st, 2d, and 3d
class.

are brought forward and considered. And upon the result of this examination the report is made by the examiners to the speaker.

Where parties who are to enter into recognizance, under the 28 Geo. 3. c. 52. or the 53 Geo. 3. c. 71. or sureties, reside above forty miles from *London*, recognizance may be entered into before a justice: and is to be by him certified and transmitted to the speaker.

A provision has been made for the convenience of parties who reside at a distance from *London*, by the stat. 28 Geo. 3. c. 52. § 7 (a), which, by reason of the 53 Geo. 3. c. 71 § 5 (b), will apply to recognizances under either act. The provision alluded to is, that where parties who are to enter into recognizances, or their sureties, or any of them, reside above forty miles from *London*, they may respectively enter into recognizances before a justice of the peace (c), (any justice being thereby authorized and empowered to take the same) and such recognizance being duly certified under the hand of such justice, and transmitted to the speaker, is to have the same force and effect as if entered into before him.

Persons who are to examine sufficiency of sureties may

The above stat. 28 Geo. 3. c. 52. § 7, empowers the persons so appointed to examine the sufficiency of the sureties, to receive in such exa-

(a) For this stat. see *ante*, 26.

(b) For this stat. see *ante*, 56.

(c) For a form of an affi-

davit of the acknowledgment of a recognizance in either case, see *App. ccccxcv.* Care should be taken that there is a proper affidavit stamp.

mination, as evidence, affidavits relating thereto, sworn before a master in chancery, or a justice of the peace; either of whom has authority thereby, to administer such oath, and is authorized and required to certify such affidavit under his hand.

Sect. 3.

Petitions of 1st, 2d, and 3d class.

receive affidavits sworn as herein.

And by the stat. 53 Geo. 3. c. 71. § 11 (a), the persons so appointed to examine the sufficiency of the sureties in recognizances, under either the 28 Geo. 3. c. 52. or that act, are empowered to take any affidavit relative to such sureties, or to the entering into recognizances, and to administer the oath for taking such affidavit.

Examiners may take affidavits relative to sureties and recognizances, and administer the oath for taking such affidavits.

And by the same clause persons convicted of wilfully false swearing in any such affidavits, are made guilty of perjury, and liable to its penalties.

Swearing falsely in such affidavits, perjury.

SECTION 4. *Of the omission to enter into recognizances, or to comply with the terms thereof.*

1, 2, 3. As to petitions of the *first, second, and third* classes (b).

(a) For this stat. see *ante*, 58.

(b) For these classes, see *ante*, 82, 83.

Sect. 4.

Petitions of
1st, 2d, and 3d
class.

If within the
14 days recog-
nizance under
28 Geo. 3 c.
52. be not en-
tered into, and
received by
speaker, he is
to report it
to the house,
and the order
for taking the
petition into
consideration
is to be dis-
charged, unless
the house en-
large the time.

So with respect
to recogni-
zances under
the 53 Geo. 3.
c. 71.

(*ante*, 194)

But in these
latter, any mat-
ter brought be-
fore the house
in order to the
enlargement of
the time must
be on oath.

By the stat. 28 Geo. 3. c. 52. § 5. (*a*), if, at the expiration of the fourteen days before-men-
tioned, the recognizance under that act shall
not have been entered into, or shall not have
been received by the speaker, he is to report the
same to the house (*b*); whereupon the order for
taking the petition into consideration is to be
discharged, unless the house shall see cause to
enlarge the time for entering into such recogni-
zance, as before stated.

The stat. 53 Geo. 3. c. 71. § 3. (*c*) has a cor-
responding provision with respect to the recog-
nizance under that act, the two clauses being
similar, with the exception only before alluded
to, that any matter brought before the house,
with a view to obtain an enlargement of the
time for entering into the recognizance under
that act, must be upon oath.

These omissions to enter into recognizances
have very frequently occurred, whereupon the
speaker reporting the same to the house, if an
order has been made for taking the petition into
consideration, such order has been discharged;
and if no such order has been made, the pro-

(*a*) For this stat. see *ante*, instance as to Mr. Williams's
25, 26. petition.

(*b*) *St. Alban's*, 24th Feb. 1809. 64 Journ. 88. See an
(*c*) For this stat. see *ante*,
55, 56.

ceedings have died away as a matter of course. Of which the following cases are instances :

Sect. 4.

Petitions of
1st, 2d, and 3d
class.

68 Journ. 106.

On report
of speaker
that recogni-
zance not en-
tered into, or-
der for taking
petition into
consideration
discharged.

(And see
Journ. *passim*.)

Great Grimsby, 22d December, 1812.—The speaker acquainted the house that the electors who had petitioned the house on the 7th, complaining of an undue election and return, had not entered into a recognizance in respect of such petition, according to the directions of the act 28 Geo. 3. c. 52. The order for taking the petition into consideration was discharged (*a*).

70 Journ. 3.

Same point.

Grampound, 8th Nov. 1814.—The speaker acquainted the house, that Mr. *Montague*, who had petitioned the house on the 28th July then last, complaining of an undue election and return, had not entered into a recognizance in respect of such petition, according to the directions of the act 28 Geo. 3. c. 52, nor according to the directions of the act 53 Geo. 3. c. 71. Upon which the petition fell to the ground as a matter of course.—So with respect to another petition relating to the same election.

It is to be observed, that the language of these statutes is imperative, and that if the time for entering into recognizances be suffered to elapse without a compliance with the law in this particular, the house has no authority, whereunder

The house
cannot relieve
parties omit-
ting to enter
into recog-
nizances.

(*a*) See also the cases of *Youghall*, *post*, 220, and *Mayo*, *post*, 221.

Sect. 4.

Petitions of
1st, 2d, and 3d
class.

to relieve the parties from the consequences of their omission.

2. With respect to the omission to comply with the terms of the recognizances :

1. 2. 3. As to petitions of the *first, second, and third* classes (a) :

Petitioners
having entered
into recogni-
zance not ap-
pearing for the
purpose of pro-
ceeding to ap-
point select
committee;

or, not appear-
ing before com-
mittee to prose-
cute petition ;

or, neglecting
to renew peti-
tion in every
new session
until committee
appointed, or
until petition
withdrawn ;

to be holden to
have made de-
fault in recog-
nizance, under
28 Geo. 3. c. 52.

By the stat. 28 Geo. 3. c. 52. § 9(b). If the petitioner or petitioners, having entered into the recognizance under that act, do not appear in the proper time personally, or by his or their counsel or agents, for the purpose of proceeding to the appointment of the select committee; or if the select committee, appointed for the trial of the petition, shall inform the house that such person or persons did not appear in like manner before the committee to prosecute the petition; or, if such person or persons shall neglect to renew (c) their petition within four sitting days after the day of the commencement of every session of the same parliament, subsequent to that in which the petition was presented, and until a select committee shall have been appointed for the trial of the same, or until it shall have been withdrawn by permission of the house: in every such case, such person or persons shall be held to have made default in such recognizance.

(a) For these classes, see *ante*, 82, 83.

(b) For this stat. see *ante*, 27.

(c) See *ante*, 148, 149.

The same clause directs the speaker to certify such recognizance into the court of exchequer, and that such person or persons have made default therein; and such certificate is thereby to be conclusive evidence of such default, and the recognizance so certified, is to have the same effect as if estreated from a court of law.

The same clause also further provides, that such recognizance and certificate shall be delivered by the clerk or clerk-assistant of the house, into the hands of the lord chief baron, or of one of the barons of the exchequer, or of such officer of that court as shall be appointed by the court to receive the same.

By the stat. 53 Geo. 3. c. 71. § 12 (a), if the petitioner or petitioners, having entered into the recognizance under that act, shall neglect, or refuse, for seven days after demand, to pay to any witness who shall have been summoned on his or their behalf, before the house or the select committee, on the trial of the petition, the sum certified (under the act) by the speaker to be due to such witness, together with the further sum of forty shillings a day for every day during which he or they shall delay to satisfy the same;

Sect. 4.

Petitions of 1st, 2d, and 3d class.

Whereupon speaker to certify into exchequer recognizance and default.

Certificate to be conclusive evidence of default; and recognizance so certified, to have effect as if estreated from a court of law. Recognizance and certificate to be delivered by the clerk, &c. into the hands of certain persons in the court of exchequer.

Petitioner not paying witness within seven days after demand, the sum certified by the speaker to be due to him, and forty shillings a day for every day during which he shall delay payment;

(a) For this stat. see *ante*, 59.

Sect. 4.

Petitions of
1st, 2d, and 3d
class.

or, not paying
any officer of
the house, or
party appear-
ing in oppo-
sition to peti-
tion, within
six months
after demand,
the sum certi-
fied by the
speaker to be
due, and the
same being
proved to the
satisfaction of
the speaker,
by affidavit,
before a master
in chancery,
to be holden to
have made de-
fault in his re-
cognizance.

Or, if such petitioner or petitioners shall neglect or refuse, for the space of six months after demand, to pay to any officer of the house, or to any party appearing in opposition to the petition, the sum certified by the speaker in pursuance of the 28 Geo. 3. c. 52. or of that act, to be due to such officer or party for their fees, costs, or expenses; and that such neglect or refusal shall be proved to the satisfaction of the speaker by affidavit sworn before a master in chancery, (such master being thereby authorized to administer the oath, and required to certify such affidavit under his hand;) in every such case such person or persons shall be held to have made default in the recognizance.

Whereupon
such steps to
be taken as
under recog-
nizance of 28
Geo. 3. c. 52.

And in the case of such default, the same clause directs (in terms almost *verbatim* the same) the steps to be taken which have been pointed out with respect to recognizances under the 28 Geo. 3. c. 52 (a).

SECTION 5. *Scotland.*

There are no distinctions in the law with respect to recognizances relating to election pe-

(a) See *ante*, 211.

titions, which make it necessary to add any observations regarding elections for places in *Scotland*.

Sect. 5.
Petitions of
1st, 2d, and 3d
class.

As to the time within which recognizances are to be entered into, and as to enlarging such time :

See ante, sec. 3.

As to petitions of the *first*, *second*, and *third* classes (a) :

The following case occurred before the resolution of the 16th July, 1807, before mentioned (b) :

Dumfries, 9th December, 1790.—Sir *James Johnstone*, who had petitioned against the election and return of Mr. *Millar*, presented a petition, stating, that Mr. *Millar* had not taken his seat; that as the petitioner was informed he was then in *Scotland* or *Ireland*, and that he not having any place of residence or known agent in *London*, the petitioner was not able to give him the due notice within the time limited by the act for entering into the recognizance, and praying, that the leaving such notice with the clerk of the house might be deemed a good service, or for other relief. A motion

46 Journ. 46.
Where petitioner was unable to serve sitting member with notice of entering into recognizance, the house enlarged the time.

(a) For these classes, see ante, 82, 83. (b) See ante, 204.

Sect. 5.

Petitions of
1st, 2d, and 3d
class.

to that effect with respect to the service of the notice was negatived, (in conformity to the then practice;) but the time for entering into the recognizance was enlarged for thirteen days.

SECTION 6. *Ireland.*

App. ccciv.
cccxxxviii.

By the operation of the fourth article of union, together with that of the stat. 42 Geo. 3. c. 106. § 1. the rules with respect to recognizances relating to election petitions, in respect of elections for places in *Ireland*, are the same as in the cases of other elections; and the few following observations being kept in view, they may be so taken :

See *ante*, sec. 2.

As to the time within which recognizances are to be entered into, and as to enlarging such time :

Petitions of
1st, 2d, 3d, and
4th class.

As to petitions of the *first, second, third, and fourth* classes (a) :

App. ccclxxxiv.

The stat. 47 Geo. 3. c. 14. § 8. in contemplation, that it might happen that the recognizance under the 28 Geo. 3. c. 52., though duly entered into, might not come to the speaker's

(a) For these classes, see *ante*, 82, 83.

hands until after some delay; enacted, that the order for taking into consideration any petition relative to the trial of any controverted election, or return, or right of election (*a*) in *Ireland*, shall not be discharged until the expiration of twenty-eight days after the petition shall have been presented to the house, by reason that the recognizance required by the 28 Geo. 3. c. 52. § 5, was not received by the speaker under the provisions of that act; and that in case such recognizance shall not be received by the speaker before the expiration of such twenty-eight days, he is to report the same to the house; whereupon the house is to proceed as they would before have proceeded in case the recognizance had not been received by the speaker within the fourteen days.

Sect. 6.

Petitions of 1st, 2d, 3d, and 4th class.

Order for taking petition into consideration not to be discharged, because recognizance under 28 Geo. 3. not received by speaker, until after twenty-eight days.

(See *ante*, 208.)

This clause provides, that nothing therein is to be construed to alter or enlarge the time for entering into the recognizance under the 28 Geo. 3. c. 52 (*b*).

(*a*) By the 28 Geo. 3. c. 52. § 32. the rules and regulations in that act, by which certain persons are directed to enter into recognizances, are not to apply to petitions presented in pursuance of that act, and relating solely to questions respecting the right

of election, or of appointing a returning officer. But the above act seems to contemplate a recognizance in such cases.

(*b*) *Galway*, 2d Feb. 1813. The speaker acquainted the house, that in the case of the petition of *John Joyce*, and

Sect. 6.

Petitions of
1st, 2d, 3d, and
4th class.

58 Journ. 80.

Where petitioner was not able to serve the sitting member with notice of entering into the recognizance, the house enlarged the time.

(See also *post*, 218.)

Ante, 213.

Ante, 194.

Ante, 195.

From the greater distance and increased difficulty of serving the previous notice, several cases have occurred in which the house has been applied to, to enlarge the time for entering into the recognizance.

Drogheda, 10th December, 1802.—Mr. *Ogle*, who was a petitioner against the election and return of Mr. *Hardman*, petitioned the house, stating, that the sitting member not being in *England*, nor having any known agent there, it had not been in the power of the petitioner to give him the two days notice of his intention to enter into recognizance; stating that he was prepared with sureties, and praying that the time might be enlarged. The precedents in the cases of *Dumfries*, 9th December, 1790; *Plymouth*, 17th December, 1790; and *Seaford*, 23d December, 1790, were referred to, and the matter of the petition being verified by a member pre-

others, who had petitioned the house on the 8th Dec., then last, complaining of an undue election and return; the examiners by him appointed to examine the sureties named in the recognizance, had made a special report to him, that on reference to the act (47 Geo. 3. c. 14. § 8.) enlarging the time before the speaker should make a report to the house,

of his not having received a recognizance in the case of an *Irish* election petition, it appeared doubtful to them whether the time thereby allowed extended to the examination of the sufficiency of the sureties; but that, in his opinion, the recognizance had been duly entered into, according to the provisions of the act referred to in such special report. 68 Journ. 109.

sent, the time was enlarged for twenty-one days (*a*). The like order was also made in respect of the petition of certain freemen and freeholders.—This case has been since followed by the resolution of the 16th July, 1807.

Sect. 6.

Petitions of
1st, 2d, 3d, and
4th class.

(See *ante*, 204.)

Newry, 16th January, 1807.—A petition was presented, stating, that certain electors who had petitioned the house against the election and return, by reason of the distance from *London*, had not been able to have the recognizance transmitted to the house in sufficient time, and praying that further time might be granted for that purpose. The matter of the petition was verified, to the satisfaction of the house, by a member present. There was a debate upon the question, which was adjourned to the 20th January, when the time for entering into recognizance was enlarged till the 6th of February.

62 Journ. 68,
70.

Where the recognizance had not been transmitted in time to the house, by reason of the distance from *London*, the house enlarged the time.

(*a*) On the 3d of February Mr. *Ogle*, the petitioning candidate, not having entered into his recognizances, and the speaker acquainting the house therewith, the order of the day for taking his petition into consideration was discharged. And the speaker also acquainting the house, that one of the electors who had petitioned, had, together with two sureties, entered into a recognizance in *Ireland* in respect of such petition, which recognizance had been left with the speaker; but that the validity of such sureties had not, for want of due notice to the sitting member, or his agent, been examined and approved of in the usual manner, the stat. 28 Geo. 3. c. 52, and the resolution 11th February, 1789, having been read, a debate arose upon the motion for discharging the order of the day for taking the petition into consideration on the 1st March; which was adjourned February 7th, when the order was discharged. 58 Journ. 118. 129.

Sect. 6.

Petitions of
1st, 2d, 3d, and
4th class.

62 Journ. 63.

Where the
affidavit of the
sufficiency of
the sureties
accompanying
the recogni-
zance was not
upon a stamp,
the house
allowed four
days more for
the sureties to
enter into re-
cognizance.

Londonderry, 12th January, 1807.—The house being informed that the recognizance entered into for prosecuting the petition of the Hon. *William Ponsonby* had been received; but that the affidavit transmitted therewith of the sufficiency of the sureties appeared to be on paper not stamped, so that the examiners could not receive it in evidence, and that the time for entering into recognizance expired on that day. The sureties were ordered to enter recognizance on the Friday then next, the 16th.

68 Journ. 60.

Where peti-
tioner was un-
able to serve
sitting member
with notice of
entering into
recognizance,
the house en-
larged the time.

(And see *ante*,
204.)

Galway, 14th December, 1812; and 2d and 8th February, 1813.—Mr. *Blake*, who had petitioned the house on the 4th December against the return of the Hon. *Frederick Ponsonby*, presented a petition on the 14th, stating, that he had delivered in to the clerk of the recognizances the names, additions, and places of abode of his intended sureties; that the examination of the sureties was appointed, but that Mr. *Ponsonby* not having taken his seat, nor having any known agent in *London*, he had made diligent inquiry after him, in order to his being served with the proper notice, but that he apprehended he should not be able to give the necessary notice; adding that he and his sureties were in all other respects ready to enter into the recognizance; and praying that the house would en-

large the time for entering into such recognizance. The house enlarged the time till the 17th January (a).

Sect. 6.
Petitions of
1st, 2d, 3d, and
4th class.

Downpatrick, 10th April, 1815.—A petition was presented from the solicitor to Mr. *Ruthven*, stating, that on the 18th March a petition had been lodged in the crown-office in *Ireland*, against the return of Lord *Glerawley*; that it had been presented on the 3d April, and had been ordered to be taken into consideration on the 20th April, and afterwards on the 4th May; that on the 4th April he had delivered at the office of the clerk of the house, the names and additions of the sureties who proposed to enter into the recognizances, and had obtained an appointment from the examiners for examining the sufficiency of the sureties for the 17th April; that he had transmitted by the mail a copy of the appointment of the examiners, and of their appointment of the 17th April, to Mr. *Ruthven*, with directions to serve the same on Lord *Glerawley*, and instructions for completing the recognizance; and that he had left

70 Journ. 200.

Where, on account of the distance from *London*, the petitioner could not receive his solicitor's directions as to entering into recognizance, so as for it to be completed in time, the house enlarged the time.

(a) County of *Mayo*, 30th March, 1814.—Upon an application to the house, the agent for the petitioners was examined upon oath in relation to the matter of the petition, and upon such examination the time for entering into the recognizances was enlarged till the 18th of April. But the particular circumstances do not appear. 69 Journ. 172, 195.

Sect. 6.

Petitions of
1st, 2d, 3d, and
4th class.

duplicates of the above copies at Lord *Glerawley's* residence in *London*, with a request that they might be forwarded; that from the time requisite (Mr. *Ruthven* residing in the north of *Ireland*), the recognizances could not be perfected before the 13th, and could not reach *London* till the 17th, which was the day appointed by the examiners; and praying, under all the circumstances, that the time might be enlarged till the 11th May, which, after the examination of Mr. *Hacket* upon oath, was ordered.

See *ante*, sec. 4.

As to the omission to enter into recognizances, or to comply with the directions thereof:

As to the petitions of the *first*, *second*, and *third* (a) classes (b):

68 Journ. 123.
On report of
speaker, that
recognizance
not entered
into, order for
taking peti-
tion into consi-
deration dis-
charged.

Youghall, 8th Feb., 1813.—The speaker acquainted the house, that the Hon. *William Francis Spencer Ponsonby*, who petitioned the house on the 22d December, complaining of an undue election and return, had not entered into a recognizance in respect of such petition, according to the directions of the act 28 Geo. 3. c. 52. The order for taking the petition into consideration was discharged.

(a) *Quære*, as to petitions
of the fourth class, see *ante*,
215.

(b) For these classes, see
ante, 82, 83.

County of *Mayo*, 21st April, 1814.—The speaker acquainted the house, that the petitioners had not entered into a recognizance in respect of their petition, according to the directions of the act of 28 Geo. 3. c. 52, nor into a recognizance in respect of their petition, according to the directions of the act 53 Geo. 3. c. 71. Whereupon the order for taking the petition into consideration was discharged.

Sect. 6.

Petitions of
1st, 2d, and 3d
class.

69 Journ. 195.

Same point.

CHAPTER IV.

SECTION 1. *Of the exchange of lists of objected votes, and when such lists are to be exchanged.*

SECTION 2. *Of the degree of minuteness required in lists of objected votes.*

SECTION 3. *Of the non-insertion of objected votes in the lists; and of the insertion of frivolous objections.*

SECTION 4. *Scotland.*

SECTION 5. *Ireland.*

AS to the exchange of lists of objected votes:

An election petition having been presented to the house, and the recognizances entered into

Sect. 1.

in those cases wherein the law requires them, it becomes necessary to advert to some preparatory steps which belong to the approach of the trial.

Petitions of
1st, 2d, and 3d
class.

With respect to petitions of the *first, second, and third* classes (*a*):

It is a matter of great convenience to the parties, and tends in no small degree to facilitate the proceedings upon the trial of a controverted election, that where the subject of the petition regards the validity or invalidity of votes, there should be a communication from the one side to the other, as to the votes which are intended to be disputed, and as to the objections thereby which are proposed to be made.

Lists of objected votes, formerly required in particular cases; afterwards in cases of petitions as to county elections; now, in all cases.

The advantages of this interchange of intended objections appears to have been long seen, and more or less acted upon by the house. Lists of objected votes were at first required in particular cases (*b*): The exchange of them was afterwards, by a resolution of the house, made a

(*a*) For these classes, see concerning certain orders, *ante*, 82, 83.

(*b*) 29th November, 1699. —The election committee made some order to that effect.—The entry in the Journal runs thus: A debate arising in the house, concerning certain orders, lately made by the committee of privileges and elections, relating to the giving of lists of persons excepted to, on either side, in cases touching elections depending before them; and the

necessary proceeding in cases of petitions in respect of county elections; and, recently (by act of parliament), in all cases of controverted elections whatever.

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class.

The resolution of the house, alluded to (a), is that which required that petitioners, in all cases

house considering the inconveniences that have arisen thereby, ordered, "That the said orders should be discharged; and that it should be an instruction to the said committee, That they should make no such orders for the future." 13 Journ. 9.

Mr. *Luders* (2 Lud. 561.) observes, that "this entry leaves us at a loss to discover what the inconveniences complained of were;" perhaps, they arose more from the practice of the court, than from the regulation itself.

Rutlandshire, Jan. 1710-11. —The house, of its own accord, required lists from the *sitting member* of such votes as he intended to object to, or to have added to his own. This seems to have been "moved, and acquiesced in as the sense of the house." But these lists were delivered to the house, not to the other party. Afterwards the speaker desired to know the pleasure of the house, whether the clerk might give copies of those lists to the

petitioner, which the house acquiesced in, that he might do. 16 Journ. 461.

Harwich, 8th June, 1714. —The house made an order for the exchange of lists, (in a borough election) and insisted upon a *bonâ fide* obedience to it. 17 Journ. 672.

Yorkshire, 1735. The house made an order for the exchange of lists of voters intended to be objected to, as well on the part of the petitioners, as on that of the sitting members. 22 Journ. 501.

(a) This resolution was first made in the beginning of the session, which commenced, January, 1735-6, having been occasioned by the petition in the above case of *Yorkshire*, and has been passed since that time in its present form, a few of the original words only being omitted, by reason of the substitution of the trial by select committees, for that at the bar of the house, or before the committee of privileges and elections.

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Petitions of
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of controverted elections for counties (*a*), in *England* and *Wales*, by themselves, or their agents, within a convenient time to be appointed by the house, to deliver to the sitting members or their agents, lists of the persons intended by the petitioners to be objected to, who voted for the sitting members, and *vice versâ*, on the other side.

This resolution (now, in effect, superseded) has become the foundation of the stat. 53 Geo. 3. c. 71. § 1 (*b*), which has nearly, though not exactly, adopted its provisions: Upon this statute the law now depends, and it is applicable in respect of petitions as to elections, for all places in *England* and *Wales*.

As to when such lists are to be exchanged:

All parties
complaining
of, or defend-
ing contro-
verted elec-
tions or re-
turns by
themselves or

This act directs, that in all cases of controverted elections, or returns, all the parties complaining of, or defending the same, are by themselves, or their agents, to deliver in to the clerk

(*a*) In the case of the borough of *Southwark*, 1785. —Where the number of voters is very great, it was proposed, by the petitioner's counsel, in opening the case, to proceed by separate parishes, and to exchange lists

of objections, as in counties. This was agreed to by the sitting member's counsel. And being approved of by the committee, they, by their resolutions, gave directions accordingly. 2 Lud. 573.

(*b*) For this, see *ante*, 53.

of the house of commons, under § 1, lists of the voters intended to be objected to; and such lists are to be kept by such clerk, in his office, open to the inspection of all parties concerned.

By the same clause, such lists are to be delivered in, where the election or return is for any county in *England* or *Wales*, ten days, at least, before the day appointed for the consideration of the petition; and upon all other elections or returns for places in *England* or *Wales*, five days, at least, before such day.—A provision being at the same time made, that in cases where the consideration of any such petition shall be postponed by order of the house, during the same session, or the petition shall be renewed at the commencement of another session, it is to be sufficient if such lists are delivered within the like periods before the committee for the trial shall be actually appointed.

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Petitions of 1st, 2d, and 3d class.

agents, to deliver to the clerk of the house of commons, lists of voters intended to be objected to, to be kept in his office, for inspection.

Lists to be delivered in, in respect of county elections, or returns for *England* or *Wales*, ten days; and in respect of other places, in *England* or *Wales*, five days before the day for consideration of petition.

Where consideration of petition postponed by order of the house, or, in cases of renewed petitions, lists to be delivered, such ten or five days before the appointment of committee.

SECTION 2. *Of the degree of minuteness required in lists of objected votes.*

1, 2, 3. AS to petitions of the *first*, *second*, and *third* classes (a):

(a) For these classes, see *ante*, 82, 83.

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Petitions of
1st, 2d, and 3d
class.

Parties ex-
changing lists,
to give the
heads of ob-
jection, and to
distinguish the
same against
the names of
voters.

No precise
form of lists.

The statute before mentioned, 53 Geo. 3. c. 71. § 1 (*a*), requires the parties exchanging lists to give therein the several heads of objections, and to distinguish the same against the names of the voters excepted to.

There is no precise form given by law for such lists, and those which have been adopted in different cases have, in some degree, varied from each other.

Voters in-
tended to be
objected to, to
be correctly
described;

objections to
them to be ex-
plicitly pointed
out.

Substantially, it is requisite that they should correctly and distinctly describe the voters intended to be objected to, and that they should explicitly point out the nature of the objections which are to be raised, as to such voters respectively.

It has been made a question, whether votes proposed to be added to the poll should or should not be included in such lists (*b*); and also, in many instances, how far the identity of the voters, or the nature of the objections to be made to them, has been sufficiently designated by the statements in the lists.

These questions, indeed, have arisen under the resolution of the house, but as the terms of

- (*a*) For this stat. see *ante*, see *App.* cccxcix. See also
53. 3 *Lud.* 574. 577. 602, and
(*b*) For the forms of lists, *Peck.* 41, 42. 47. 387.

the statute (except as to the delivery of the lists to the clerk of the house) correspond with those of such resolution, the decisions, under the one, may be equally material under the other.

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class.

A point of the first description arose in the case of *Bedfordshire*, 1785.—Where it was made a question, whether the cases of votes tendered and rejected at the poll, and proposed, on the part of the sitting member, to be added to his numbers, before the committee, could be entered upon, such votes not being specified in his lists of objections (*a*). (Those for the petitioner were included in his lists of objections.)

1 Lud. 390.
392.

Quære,
Whether votes
proposed to be
added to the
poll, ought to
be included in
lists.

The committee did not decide whether they could, or could not enter upon votes so circumstanced; but they resolved, that the parties “should deliver to each other, on the next day, a list of all such persons as they meant to add to the poll in that and the following hundreds, (the lists being arranged by hundreds) and that the consideration of all such votes should be deferred, till all the votes already objected to were decided.”

It should seem, however, that the wording of

Semble.

The insertion

(*a*) In the *Middlesex* case, jected votes to the poll. 2
1804.—It was not attempted, Peck. 39, (n.)
on either side, to add any re-

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class.

of such votes
not necessary.

the resolution (or of the statute) would not require such votes to be inserted; and it does not appear that there has been any decision which has gone the length of declaring it to be necessary.

Questions upon the other points have more frequently arisen (*a*), and the general result of them seems to be that,—

First, with respect to the description regarding the identity of voters, if there be a misrepresentation, in the statement which is by law required either expressly, or by necessary implication, it will constitute a decisive objection to the consideration of votes; unless, indeed, it can be accounted for upon some ground which should shew that the party making the statement might well have reasoned to its accuracy. But that if the misrepresentation be confined to a matter which was not necessary, it will not prejudice the party making it.

Secondly, that with respect to the designation of the objections intended to be made against voters, it must sufficiently point out the nature of such objections; and that votes can only

(*a*) See the case of *Waterford*, 1803, (*post*, 239), not depending upon the resolution of the house, or the 53 Geo. 3. c. 71, but operating by analogy.

be attacked upon the objections so pointed out, however clearly it may appear that they are vulnerable upon other grounds.

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class.

The degree of accuracy required, is however rather to be collected from an examination of the different decisions, than from any definite rule which can be extracted from them.

The above propositions depend upon the following decisions :

1. As to the description regarding the identity of voters :

Middlesex, 1804.—*Thomas Pierce* was described in the list of objections, “*Mathew Pierce.*” The committee determined that his vote should not be questioned.

2 Peck. 49.

Where a voter was objected to by a wrong christian name, his vote was not permitted to be questioned.

And in the same case, *Humphry Tunkinson*, one of the mill-voters, was objected to by the name of “*Henry Tomkinson.*” The counsel for the petitioner contended, that this vote ought to be struck off, without any further proof; it appearing upon the face of the poll, that it had been given in respect of the same property as those of the other mill-voters, against whom a resolution of the committee had already been passed. The committee determined, that the

2 Peck. 50.

Where a voter was objected to by a wrong christian name, his vote, though evidently bad, was not permitted to be questioned.

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class.

vote of *Humphry Tunkinson*, not being objected to by the petitioner, is not brought under consideration.

2 Peck. 49.

Where a voter was objected to, by a wrong christian name, but the christian name was perfectly illegible on the poll, the objections to him were, nevertheless, permitted to be gone into.

An exception, however, was made upon this head, where the party was misled by the entry in the poll-book: Thus, in the same case, where *Lucius Concannen* was described in the lists of objections, "*Laurence Concannen*;" but on the poll, the christian name of the voter was perfectly illegible; the committee suffered the objections to the vote to be proceeded upon.

In the following instances, which arose also in the *Middlesex* case, 1804, the misrepresentations being upon matters not necessary to be inserted, were holden not to be fatal objections.

2 Peck. 49.

Where, in the objection, there was a mistake in the christian name of the occupier of the voter's freehold, the objections to him were, nevertheless, permitted to be gone into.

Thomas Garman. In the list of objections, on the part of Mr. *Mainwaring*, the christian name of the occupier of the voter's freehold was stated to be *George* instead of *John*, as stated on the poll. The committee would not strike the voter's name out of the list, but proceeded to discuss the objections.

2 Peck. 49.

Where the voter was described as residing in a wrong street,

Joseph Tatem.—The voter's residence was stated in Mr. *Mainwaring*'s list to be "*Dilt*," instead of "*Dyot*"-street. It was contended,

on the part of the sitting member, that although it was not necessary to have stated the voter's residence at all, yet, where one party, in his list of objections, took upon himself to state it, and stated it incorrectly, the committee would not suffer the objection to be proceeded in, since the other party, who was to support the vote, might be misled by this mis-description. —The committee over-ruled the objection, and proceeded to examine the vote.

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class.

the objections
to him were,
nevertheless,
permitted to be
gone into.

Zachariah Bowman.—The petitioner, in his list of objections, had classed this vote in the *Finsbury* division. He had, in fact, voted in the *Tower* division. The counsel for the sitting member objected to the vote being called in question; but the committee determined, “that the objection to entering into the consideration of the assessment,” (*i. e.* the objection made to the vote,) “was not valid, but that the counsel might postpone it till they came to the *Tower* division.”

2 Peck. 49.

Where a voter
objected to
was classed in
a wrong divi-
sion, (the ob-
jected votes
having been
arranged by
the party ob-
jecting, into
divisions) the
objections were
nevertheless
permitted to
be gone into,
the considera-
tion being
postponed to
be taken in
the proper
division.

2. As to the designation of the nature of the objections intended to made against voters:

Questions upon this point have constantly arisen during the consideration of petitions, in respect of county elections. There were some in the

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class.

cases of *Yorkshire*, 1735 (a), and many in that of *Oxfordshire*, 1755 (b): but as these cases were before the establishment of select committees, they have not the degree of weight which belongs to more recent decisions. In the following case, however, there were several decisions which may afford very useful instruction upon this part of the subject:

(a) *Yorkshire*, 2d March, 1735.—The objection in the petitioner's list, which had been delivered under an order of the house, was, that the voter "was not assessed, nor had a freehold of forty shillings *per annum*, at the place where, at the time of the election, he swore that his freehold did lie." The evidence adduced tending to prove that such person had no freehold at all there, the counsel for the sitting member objected to the admission thereof: but the house resolved, that the counsel for the petitioner should be admitted to give evidence as to a person's having no freehold at all, to whom the petitioners objected, in their list of objections, that "he had not a freehold of the annual value of forty shillings." 22 Journ. 604.

Oxfordshire, 22d Feb. 1755. The same point was decided. 27 Journ. 172.

The *Gloucestershire* committee made a resolution, in

the same words, upon a similar question. 27 Journ. 105.

(b) *Oxfordshire*, 11th Jan. 1755.—As to the vote of *Stephen Garrett*. Under the objection of "As voting in respect or in right of messuages, lands, or tenements, which had not been assessed," &c. it was proposed, on the part of the petitioners, to give evidence, that part only of the freehold for which the vote was given, was assessed, and that part was under forty shillings *per annum*. And a motion being made, and the question being put, that the counsel for the petitioners be admitted to give evidence that the land for which the voter was assessed to the land-tax was not of the value of forty shillings a year, was negatived. 27 Journ. 72.

In the same case, on the 27th February, such evidence was admitted as to the vote of *John Wimbush*; but it does not distinctly appear under what class of objections. 27 Journ. 181.

Middlesex, 1804.—As to the vote of *John Taylor*. The objections were, “No freehold;” “no freehold as described on the poll;” “no freehold in the division for which he voted.”

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2 Peck. 49.

Under the objections of

“No freehold;” “No freehold, as described on the poll;”

“No freehold in the division for which he voted;” evidence may be given to shew that premises in respect of which he voted were in another county.

It was proposed to shew, that the premises for which he had voted were situated in the city of *London*, and not in the county of *Middlesex*: it was insisted, that it was not competent for the party objecting to give any such proof, since this had not been included in the list of objections. But the committee resolved that the evidence might be received; (and the premises being shewn to be in *London*, and not in *Middlesex*, the vote was declared bad).

In the same case.—The vote of *William Abud* was objected to, as “having no freehold;” and as “having no freehold as described on the poll.” The witness who was called to establish these objections, was asked whether the premises had not been conveyed to the voter within a year previous to the election. The committee determined, that such evidence not applying to the objections given in, should not be entered into.

2 Peck. 50.

Under the objections of

“No freehold;” “No freehold as described on the poll;” evidence cannot be

given that the premises had been conveyed to the voter within a year.

Middlesex, 1804.—As to the vote of *Richard Friday*. The objections relied on were, “no freehold;” “no freehold, as described on the

2 Peck. 50.

Under the objections, “No freehold;”

“No freehold

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class.

as described on
the poll ;”

“ Not duly
assessed ;” evi-
dence cannot
be given that
the voter had
no freehold in
the occupation
of the tenant
named on the
poll.

poll ;” “ not duly assessed.” He had voted for land in his own occupation. The assessor was called to explain the assessment ; and was asked in his cross-examination, by the counsel who impeached the vote, if *Friday* had any land in his own occupation. It was said that this question ought not to be put, because it pointed to another objection, which had not been made ; namely, that the voter had no freehold in the occupation of the tenant named on the poll. It was answered, that the question tended also to shew, that he had no such freehold as he had described on the poll. The committee determined that the question should not be put.

2 Peck. 51.
Under the ob-
jection “ Not
assessed,” a
deed having
been produced
to shew the
ownership of
the freehold to
be in the voter,
evidence can-
not be given to
shew that he
was not the
person who
voted at the
election : Nor
to contradict
such deed (no
doubt arising
upon the face
of it) : Nor to
shew that the
voter had no
freehold.

Middlesex, 1804.—As to the vote of *Edward Batsford*. He voted for a share in *Fulham Bridge*. The objection was, “ not assessed.” In the assessment, the property was rated in the name of the proprietors of *Fulham Bridge* : it therefore became necessary to shew, that the voter was a proprietor, and a conveyance was produced to *Edward Batsford*, dated 1799. The counsel, who objected to the vote, proposed to shew, that this *Edward Batsford*, to whom the conveyance was made, was not the same person who had voted at the election. The committee rejected this evidence, since no specific objection had been made, that the voter “ had no

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freehold;" or, "no such freehold as described on the poll." It was then proposed to shew, that the voter had sold his freehold before the election; but the committee determined, "that no doubt arising on the face of the deed put in by the petitioner" (to answer the objection of non-assessment), "no evidence should be received to contradict the purport of it, or to shew that the voter had no freehold."

SECTION 3. *Of the non-insertion of objected votes in the lists; and of the insertion of frivolous objections.*

1, 2, 3. WITH respect to petitions of the *first, second, and third* classes (*a*):

It is of great importance that the lists of objected votes should be properly framed, and that they should embrace all the objections intended to be relied upon; inasmuch as by the stat. 53 Geo. 3. c. 71. § 2 (*b*), no evidence is to be adduced before the select committee appointed for trial of a petition, upon which such list shall have been delivered in, against the validity of any vote, upon any head of objection to such

(*a*) For these classes, see *ante*, 82, 83.

(*b*) For this stat. see *ante*, 54.

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class.

voter, other than the heads specified and particularized against him in such list.

It might occur that a party should purposely introduce into his list of objections, many which he should know to be unfounded, merely for the purpose of harassing and misleading the opposite party, and without any hope or prospect of substantiating such objections.

Where objection stated, and no evidence produced before committee to substantiate it, and committee are of opinion that such objection was frivolous or vexatious, they are to report the same to the house, and the opposite party is to be entitled to costs, to be ascertained and recovered as costs on frivolous or vexatious petitions.

In order to prevent this abuse—By the stat. 53 Geo. 3. c. 71. § 2 (a), If any ground of objection shall be stated against any voter in such lists, and no evidence shall be produced before the select committee to substantiate such objection, and if such committee shall be of opinion, that such objection was frivolous or vexatious, they are to report the same to the house of commons, together with their opinion on the other matters relating to such petition; and the party or parties opposite are, in such case, to be intitled to recover from the party or parties by whom or in whose behalf any such objections were made, the full costs and expenses incurred by reason of such frivolous or vexatious objections. Such costs and expenses are to be ascertained and recovered as the costs and expenses in cases of

(a) For this stat. see *ante*, 54.

frivolous or vexatious petitions, which will be stated hereafter.

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class.

SECTION 4. *Scotland.*

NEITHER did the resolution of 1735-6 (a), nor does the act of the 53 Geo. 3. c. 71, extend to elections for places in *Scotland*. The voters for counties are not numerous; and those for boroughs, owing to the mode of election by delegates, are in proportion still less so; so that the arrangement as to the exchange of lists is not in any case called for, in respect of election petitions from *Scotland*.

No exchange
of lists in re-
spect of elec-
tion petitions
from Scotland.

SECTION 5. *Ireland.*

AS to the exchange of lists, and when such lists are to be exchanged: See ante, sec 1.

1, 2, 3. With respect to petitions of the *first*, *second*, *third* and *fourth* classes (b):

(a) See *App.* cccxcviii.

(b) For these classes, see *ante*, 82, 83.

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Petitions of
1st, 2d, and 3d
class.

The exchange of lists was required in all cases of petitions in respect of elections for places in *Ireland*, before it was generally required in respect of those in *England*; and, with the exception of the time and manner of delivering in such lists, the provisions of the legislature correspond with those before-mentioned in this chapter.

App. cccxl.

By the stat. 42 Geo. 3. c. 106. § 3, all the parties appearing before any select committee, for the trial and determination of the merits of any petition (of the four first classes) are to interchange with and among each other lists of all such votes, and of the names of all such voters to which either of such parties purpose and intend to object.

As to when such lists are to be exchanged :

App. cccxl.

The exchange of lists does not take place in the case of petitions in respect of places in *Ireland*, previously to the consideration of the petition, as in other instances. The before-mentioned stat. of the 42 Geo. 3. c. 106. § 3. directs, that it shall be made immediately after the chairman of the committee shall have been chosen, and before any other business shall be proceeded upon by the parties, or either of them.

As to the degree of minuteness required in lists of objected votes :

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See *ante*, sec. 2.

1, 2, 3. With respect to petitions of the *first*, *second*, and *third* classes (*a*):

The observations before made under this head may be equally looked to in the case of petitions relating to elections in *Ireland*. The following case will also afford some additional information upon the subject :

See *ante*, 225.

Waterford, 1803.—The statement which was first given in on the part of the sitting member did not contain the names of the voters arranged under the distinct heads of objection, in the manner in which it was afterwards done; but the heads of objection were set together, and under them in one general list the names of all the persons objected to, without distinguishing what objection applied to each particular person (*b*).

1 Peck. 217, 226.

It must be stated in the lists what objections are intended to be applied to each voter objected to.

(*a*) For these classes, see *ante*, 82, 83.

(*b*) The counsel for the petitioner contended, that this statement was not sufficient to answer either the express direction, or the purpose of the statute. They asked how could it be said that the petitioner was advertised of the matters and things upon which the sitting

member meant to rely, when he was merely furnished with a long list of objections, and of 250 votes; not being enabled to apply any one of the objections to any individual. It was admitted that the sitting member was not bound to give so minute a statement, as might tend to disclose any matter of evidence which he

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class.

It was objected on the other side, that this statement was not sufficient to answer either the express direction or the purpose of the statute; and

was about to produce in support of what he insisted upon; but that a sufficient description only was required of his case, to apprise the other party of the nature of it, and to enable the committee to send proper directions to the commissioners for the investigation of it. But it was contended, that the list now delivered in was not calculated for this purpose; the whole poll, accompanied with the detail of every possible objection that could arise in such a mode of election, would have formed an equally good guide to the committee, and to the petitioner. And it was observed, that in the case of county elections in *England* (which, in this respect, was analogous to the present), each party is bound to give in lists, specifying what objection applied to each voter.

The counsel for the sitting member defended his statement. They argued, that the statement was required, 1. For the purpose of giving the petitioner general information; that in this case, from necessity, he derived the unusual advantage of becoming acquainted with the defendant's case, before he had finished his own: and, 2.

For the purpose of enabling the committee to direct the attention of the commissioners to certain general heads of evidence, the detail of which they would receive from the agents of the parties in *Ireland*: that each party was bound by his statement, whether it were drawn up in a more full, or in a more confined mode; but he was not bound to any form in his statement. It was even said, that had the sitting member given in such a list as was alluded to by the other side, of all the names on the poll, the committee were bound to receive it, and act upon it. They distinguished the case of county elections from the present, by remarking the different mode of expression made use of in the stat. 42 Geo. 3. *App.* and in the resolution of the house of commons, requiring lists in counties to be exchanged: the former required, generally, "lists of all such votes, and of the names of all such voters, to which either of the parties purpose and intend to object:" the words of the latter are, "giving in the said lists the several heads of objection, and distinguishing the same against the names of

cccxcviii.

they contended also upon the analogy to the case of county elections, where (at that time, under the resolution of the house) each party was bound to give in lists, specifying what objections applied to each voter. On the other hand, it was insisted that the statement was such as the law required. The wording of the statute was distinguished from that of the resolution of the house, and it was urged, that a general outline of the case was all that the statute meant should be given. The committee decided that the statement was insufficient.

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 class.

the voters excepted to." As the statute had no such words, the provisions of it were satisfied by delivering a list in a general form. A general outline of the case was all that the statute meant should be given.

March 2. The committee pronounced their decision, that the statement was insufficient. It was suggested, that the fourteenth section

of the act clearly shewed that it must be sufficiently explicit to enable the committee, in their order, "*especially* to assign and limit the facts and allegations, matters and things, respecting which the said commissioners are required and directed to examine evidence." The statement was immediately corrected, by arranging the voters in classes.

CHAPTER V.

OF SELECT COMMITTEES.

SECTION 1. *Of classing election petitions, in order to the appointment of select committees thereupon.*

SECTION 2. *Of appointing the time for taking election petitions into consideration.*

SECTION 3. *Of notice of taking election petitions into consideration.*

SECTION 4. *How far the consideration of an election petition is to take precedence of the other business of the house.*

SECTION 5. *Of enforcing the attendance of members when election petitions are to be taken into consideration.*

SECTION 6. *Of the non-attendance of parties at the time appointed for taking an election petition into consideration.*

SECTION 7. *Of the ballot for the formation of a select committee.*

SECTION 8. *Of the ballot for the formation of select committees, where more than one election petition stands for consideration on the same day.*

SECTION 9. *In what cases members are disqualified or excused from serving on select committees.*

SECTION 10. *Of the appointment of nominees to serve upon select committees.*

SECTION 11. *Of reducing the ballotted list to form a select committee.*

SECTION 12. *Of the meetings, sittings, and adjournments of select committees, as directed by the statutes.*

SECTION 13. *Of the proceedings of select committees, as directed by the statutes.*

SECTION 14. *Of the statutory provisions with respect to witnesses attending before select committees.*

SECTION 15. *Of the attendance of members put upon a select committee, and herein of the consequences of their absence.*

SECTION 16. *Of the reports of select committees to the house; of their report, that a petition is frivolous or vexatious, and the consequences as to costs, and of the recovery thereof.*

SECTION 17. *Scotland.*

SECTION 18. *Ireland.*

IT is now intended to shew the constitution and proceedings of election committees in a general point of view, reserving some further observations, and particularly upon the subject of evidence, for subsequent detail.

For the most part, the matter of this chapter applies generally to all petitions.—Upon some occasions, however, it will be necessary to discriminate between the classes.

As to petitions of the *first, second, and third* classes (*a*):

(*a*) For these classes, see *ante*, 82, 83.

Sect. 1.

App.
cccclxxxviii.

When election petitions are presented, it is with the parties to take proper steps, in order to their petition being entertained by the house. And with respect to petitions complaining of undue elections or returns, it was resolved, on the 6th December, 1774, that according to the true construction of the act of the 10 Geo. 3. c. 16. whenever such petition shall be offered to be presented to the house, within the time limited by the order of the house for questioning the returns of members to serve in parliament, the petition is to be delivered in at the table and read, without a question being put thereupon.

The house, upon a petition being presented, makes an order for taking it into consideration, and this as soon as conveniently may be.

There have been several resolutions of the house, regulating the order of reading petitions which are presented at the same time, for the purpose of taking them into consideration.

App.
cccclxxxviii.

A resolution of the 6th December, 1774, directed that such order should be settled by lot.

App.
cccclxxxix.

Another resolution of the 31st October, 1775,

as to renewed petitions delivered in together at the table, directed, that they should be read in the order in which they were directed to be taken into consideration in the preceding session.

Sect. 1.

On the 7th November, 1780, they were arranged into certain classes; and the precedence among those of the same class was directed to be arranged by lot.

App.
ccclxxxix.

On the 25th May, 1784, petitions were classed in a certain order, then fixed.—And on the 1st December, 1812, that order was altered. It was then resolved, “that whenever several petitions, complaining of undue elections or returns of members to serve in parliament, shall at the same time be offered to be presented, Mr. Speaker shall direct such petitions to be all of them delivered in at the table; where they shall be classed, and read in the following order, *viz.* Such petitions as complain that no return has been made of a member or members to serve in parliament, in the first class;—such as complain of double returns, in the second class;—such as complain of the election or return of members returned to serve for two or more places, in the third class;—such as complain of returns only, in the fourth class;—and the residue of such peti-

App.
ccclxxxix.
68 Journ. 11.
Order of
taking peti-
tions into con-
sideration.

1. Petitions complaining that there are no returns.
2. Double returns.
3. Petitions relating to elections or returns of members returned for more places than one.
4. Petitions complaining of returns only.

Sect. 1.

5. All other petitions.

tions in the fifth class.”—And that the names of the places to which such petitions (contained in the first class, if more than one), shall relate, shall, in the manner therein directed, (which is precisely the same as directed in 1784) (a), be drawn by lot; and the petitions are to be read in the order in which the names are drawn, and so with respect to the petitions of each class respectively.

Renewed petitions to be read, in the order in which they were to be read in the preceding session.
(*Ante*, 244.)

Whenever several petitions, complaining of undue elections and returns, are renewed in the same session, they are read in the order in which they were to be read in the preceding session, according to the resolution of the 31st of October, 1715, before stated,

SECTION 2. *Of the time for taking election petitions into consideration.*

Petitions of 1st class.

On presenting a petition, a day and hour to be appointed for taking it into consideration.

WITH respect to petitions of the *first* class (b):

By the stat. 10 Geo. 3. c. 16. §1. (c), whenever a petition, complaining of an undue election

(a) See *App.* cccxc.

(c) For this stat, see *ante*,

(b) For this class, see *ante*, 7.

or return, is presented, a day and hour is to be appointed for taking the same into consideration.

Sect. 2.

Petitions of 1st class.

The same statute, by § 2, had directed that no such petition should be taken into consideration within fourteen days after the appointment of the committee of privileges. But this provision has been repealed, by the stat. 11 Geo. 3. c. 42. § 2. (a) which has substituted an enactment that it should not be taken into consideration within fourteen days after the commencement of the session in which it is presented, nor within fourteen days after the return shall be brought into the office of the clerk of the crown.

Former regulations as to such time.

Not to be taken into consideration within fourteen days after petition presented, nor within fourteen days after return brought into crown office.

And by the stat. 10 Geo. 3. c. 16. § 3. (b) the house may alter the day and hour which may have been appointed for taking such petition into consideration, and appoint some subsequent day for the same, as occasion shall require.

The house may alter the day and hour for taking petition into consideration.

When there are several petitions to be taken into consideration on the same day, all the petitioners, and other parties, may, by virtue of the

When several petitions are to be taken into consideration the same day, the parties under all

(a) For this stat. see *ante*, 16.

(b) For this stat. see *ante*, 7.

Sect. 2.

Petitions of 1st class.

may be ordered to attend at the same time.

Where time for taking recognizances enlarged, order for taking petition into consideration may be postponed.

Petitions of 2d class.

On presenting a petition, a day and hour to be appointed for taking it into consideration,

Time for taking into consideration to be as in the first class. (*Ante*, 246.)

stat. 42 Geo. 3. c. 84. § 1. (*a*) be ordered to attend within the house at the same time.—It will be remembered (*b*), that by the statutes 28 Geo. 3. c. 52. § 5. and 53 Geo. 3. c. 71. § 3. the house is empowered to enlarge the time for taking the respective recognizances; in which cases the order for taking the petition into consideration is to be postponed.

With respect to petitions of the *second* class (*c*):

By the stat. 25 Geo. 3. c. 84. § 10. (*d*), whenever a petition shall be presented, in cases where no return has been made, on or before the day on which the writ is made returnable, or within fifty-two days after the date of a writ issued during a session or prorogation of parliament; upon such petition being presented, a day and hour is to be appointed for taking the same into consideration.

The time for this is regulated as with regard to petitions of the *first* class, by virtue of the following enactment, which it will be necessary frequently to recur to :

(*a*) For this stat. see *ante*,

49.

(*b*) See *ante*, 194.

(*c*) For this class, see *ante*,

83.

(*d*) For this stat. see *ante*, 20.

By the stat. 25 Geo. 3. c. 84. § 11. (a) all the rules, regulations, authorities, and powers, given or prescribed by either of the statutes 10 Geo. 3. c. 16. (b) and 11 Geo. 3. c. 42. (c) for regulating the trials of controverted elections, with respect to select committees, to be appointed by virtue of those acts, or either of them, are to be in full force and effect, with respect to select committees to be appointed by virtue of that act (*viz.* as to petitions of the *second* class), in as full and ample a manner as if the same were therein repeated, and especially enacted concerning the same.

Sect. 2.

Petitions of 3d class.

Rules, &c. applying to petitions of first class, adopted for those of second class.

With respect to petitions of the *third* class (d):

It will be observed, that in cases which the law, under certain circumstances, transfers to this class, petitions must have been originally presented which would have belonged to the *first* or *second* classes; and it will be recol-

(See ante, 96.)

(a) For this stat. see ante, 21.

(d) For this class, see ante, 83.

(b) For this stat. see ante, 6.

(e) For this stat. see ante,

(c) For this stat. see ante, 16.

23.

Sect. 2.

Petitions of
3d class.

Thirty days to
intervene be-
tween the no-
tice in the
Gazette (*ante*,
95, 96.)

and the day of
taking petition
into consider-
ation.

Petitions of
4th class.

Former regu-
lation.

Petition to
lie on the
table of the
house six
months after
the presenting
it, or 14 days
after the time
(*ante*, 97, 98.)
allowed for
presenting it.

days must intervene between the day of the insertion of such notice in the *Gazette*, and the day on which the petition is to be taken into consideration; and the order for taking the petition into consideration is, if it be necessary, in order to allow of such interval, to be adjourned.

With respect to petitions of the *fourth* class (*a*):

The stat. 28 Geo. 3. c. 52. § 28. (*b*) had enacted, that whenever a petition (to be admitted to oppose a right of election, or of appointing a returning officer or officers, determined and reported upon, as before mentioned) should be presented, a day and hour was to be appointed for taking the same into consideration, with the intervention of forty days between the presenting the petition and that day. But the time for taking such petitions into consideration is now regulated by the stat. 53 Geo. 3. c. 71. § 15. (*c*) which directs that the petition, when presented, is to be ordered by the house to lie on the table till after the expiration of the six months, or the fourteen days, which have been respectively mentioned as being the time allowed for

(*a*) For this class, see *ante*,
83.

(*b*) For this stat. see *ante*,
36.

(*c*) For this stat. see *ante*,
61.

presenting such petitions.—Within twenty-one sitting days after which six months or fourteen days, a day and hour is to be appointed by the house for taking the same into consideration, fourteen days always intervening between that of making the order and the day so appointed; it being also provided, by the same clause, that such day and hour may from time to time be altered, as to the house shall seem fit.

With respect to petitions of the *fifth* class (a):

The time of taking such petitions into consideration is necessarily governed by that which relates to the petitions of the *fourth* class, which may have given rise to them.

As to renewed petitions:

It appears, by the recital in the stat. 34 Geo. 3. c. 83. § 1. (b) that the before-mentioned enactment of the 28 Geo. 3. c. 52. § 28. which required the intervention of forty days between the day of presenting certain petitions, and the day of taking the same into consideration, had been construed to extend to renewed petitions,

Sect. 2.

Petitions of 4th class. Within 21 sitting days after such six months or 14 days, day and hour to be appointed for taking petition into consideration. Fourteen days intervening between the day of appointing and the day appointed. Day and hour may be altered. Petitions of 5th class. Time governed by those of 4th class.

(Ante, 250.) Renewed petitions. Former regulation.

(a) For this class, see *ante*, 84. (b) For this stat. see *ante*, 42.

Sect. 2.

Petitions of
5th class.

On presenting
petitions, a
day and hour,
at not less than
14 days dis-
tance, to be ap-
pointed.

and that this had been found inconvenient ;
wherefore that statute (after regulating the time
of presenting renewed petitions) directs that
whenever any such renewed petition shall be
presented, a day and hour, at not less than
fourteen days distance, is to be appointed by
the house for taking the same into considera-
tion.

SECTION 3. *Of notice of taking election petitions into
consideration.*

Petitions of
1st class.

On presenting
petition, when
day and hour
to be appointed
for taking it
into considera-
tion, notice
thereof to be
given forth-
with by
speaker to
petitioners and
sitting mem-
bers, or their
agents, with an
order to attend.

WITH respect to petitions of the *first* class (a):

Upon the presenting the petition, and the ap-
pointment of the day and hour for taking the
same into consideration, notice is, by the stat.
10 Geo. 3. c. 16. § 1. (b), to be forthwith given
by the speaker (c), to the petitioners, and the
sitting members, or their respective agents, ac-
companied with an order to them to attend the
house by themselves, their counsel, or agents,
at the time appointed.

(a) For this class, see *ante*,
82.

(b) For this stat. see *ante*, 7.

(c) For the form of the
speaker's notice, see *App.*
ccccxci.

Sect. 3.

And by § 3 (a) of the same statute, where the house shall alter the day and hour for taking the petition into consideration, the speaker is to give to the parties the like notice of the alteration, with an order to attend accordingly.

Petitions of
2d class.

So, the like
notice of any
alteration of
day and hour.

By the stat. 11 Geo. 3. c. 42. § 1. (b), where several parties, on distinct interests or grounds of complaint, present separate petitions, complaining of an undue election or return, the like notices and orders are to be given to all such parties or their respective agents.

Where several
parties, on di-
stinct interests
or grounds,
present sepa-
rate petitions,
like notices
are to be given
to all.
See 1 vol. 322.
(a).

These notices are not requisite, nor are they, in fact, given to returning officers, or other persons whose misconduct is complained of in the petition.

No notice
given to re-
turning officers
or other per-
sons com-
plained of in
petitions.

With respect to petitions of the *second* class (c):

Petitions of
2d class.

The stat. 25 Geo. 3. c. 84. § 10. (d) directs, that upon the presenting the petition, and the appointment of a day and hour for taking the same into consideration, notice thereof in writing is forthwith to be given by the speaker to the petitioners, and to the returning officer or officers, by whom the return ought to have been made,

On presenting
petition, when
day and hour
for taking it
into considera-
tion to be ap-
pointed, notice
forthwith to be
given to peti-
tioners and re-
turning officer,
or agents, with
an order to at-
tend.

- (a) For this stat. see *ante*, 7.
(b) For this stat. see *ante*, 16.
(c) For this class, see *ante*, 82.
(d) For this stat. see *ante*, 20.

Sect. 3.

Petitions of
2d class.

If returning
officer cannot
be found so as
to be served
with notice,
or does not
appear, &c.
the house may
authorize a
person to ap-
pear in his
stead.

Petitions of
3d class.

Petitioners
being consi-
dered as par-
ties, as in other
cases, to be in-
titled to the
like notices.

or shall have been made, accompanied with an order to such parties respectively, to attend the house by themselves, their counsel, or agents, at the time appointed.

If the returning officer or officers by whom the return ought to have been made, or has been made, cannot be found so as to be served with such notice or order, or being served, shall not appear, by himself or themselves, his or their counsel, or agents, at the day or time appointed for taking the petition into consideration, the house, by § 12 (a) of the same act, may permit or authorise any person to appear in his or their stead.

With respect to petitions of the *third* class (b):

By the stat. 28 Geo. 3. c. 52. § 4. (c) persons who pray to be admitted parties under petitions of this class are to be so admitted, and are to be so considered to all intents and purposes whatever.

The notice, therefore, of the appointment for taking the petition into consideration is given to such persons, as in the case of the original parties in a petition.

(a) For this stat. see *ante*, 21.

(b) For this class, see *ante*, 83.

(c) For this stat. see *ante*, 25.

With respect to petitions of the *fourth* class (a):

Sect. 3.

By the stat. 28 Geo. 3. c. 52. § 28. (b), coupled with the 53 Geo. 3. c. 71. § 17. (c), upon presenting the petition, and the appointment of a day and hour for taking it into consideration, notice of such day and hour is to be inserted by order of the speaker, in one of the two next *London Gazettes*.

Petitions of 4th class.

On presenting petition, when day and hour to be appointed for taking it into consideration, notice thereof to be gazetted.

And by the same clause of the former of these statutes, notice is also to be sent by the speaker to the sheriff, or other returning officer of the place to which such petition shall relate. And a true copy of such notice is thereby directed to be by such sheriff, or other returning officer, forthwith affixed to the doors of the county hall, or town hall, or of the parish church nearest to the place where the election has usually been holden.

Notice also to be sent by speaker to returning officer, who is to affix a copy to doors of county hall, or town hall, or parish church, nearest place of election.

By the stat. 53 Geo. 3. c. 71. § 15. (d), upon the appointment of the day and hour for taking a petition into consideration, or any alteration thereof, notices are to be sent to the petitioners, as in other cases.

Notice of day and hour, &c. to be sent to petitioners.

(a) For this class, see *ante*, 84.

(c) For this stat. see *ante*, 62.

(b) For this stat. see *ante*, 36.

(d) For this stat. see *ante*, 61.

Sect. 3.

Petitions of
5th class.

Notice of day
and hour, &c.
to be sent to
petitioners.

With respect to petitions of the *fifth* class (a):

The last mentioned provision, whereby notice is to be sent to the several persons who have petitioned the house respecting the rights in question, is sufficiently large to embrace the case of persons petitioning to defend as well as to oppose. The notice, therefore, would be alike given to the petitioners (who are in fact defendants in the cause), as to petitioners under petitions of the preceding class.

SECTION 4. *How far the consideration of an election petition takes precedence of the other business of the house.*

Petitions in
general.

AS to petitions in general:

The proceeding to the trial of controverted elections has been considered to be of such importance, that the law had given it the preference to almost all other business of whatever nature. And as it is, there are still very few exceptions to such preference.

On days ap-
pointed for

By the stat. 11 Geo. 3. c. 42. § 4. (b), on the

(a) For this class, see *ante*, 84. (b) For this stat. see *ante*, 17.

day appointed for taking any petition complaining of an undue election or return into consideration, the house was not to proceed to any other business, except the swearing of members, previous to the reading of the order of the day for that purpose.

Sect. 4.

Petitions in general. taking petitions into consideration, the house was restricted from previously entering upon any other business, except swearing members.

This restriction would apply to petitions of the *first* class (*a*), and the general adoption of the rules and regulations of the 10 and 11 Geo. 3. by the stat. 25 Geo. 3. c. 84. § 11. (*b*), and the 28 Geo. 3. c. 52. § 29, 30, and 31. (*c*), in effect extends it to those of the other classes (*d*).

The postponement of all other business, when an election petition was to be taken into consideration, was found to be inconvenient; wherefore some, though not many, exceptions to it have been from time to time introduced by subsequent acts.

The stat. 28 Geo. 3. c. 52. § 12. (*e*), enables the house, previous to reading such order, to receive any report from any select committee appointed under the 10 and 11 Geo. 3. or that

On days appointed for taking petitions into consideration, the house may now receive reports

(*a*) For this class, see *ante*, 82. (*d*) For these classes, see *ante*, 83, 84.

(*b*) For this stat. see *ante*, 21. (*e*) For this stat. see *ante*, 28.

(*c*) For this stat. see *ante*, 37.

Sect. 4.

Petitions in general.

from select committees, enter them on their journals, and give the necessary orders thereupon; may have returns amended; or may postpone the order, for the purpose of attending his majesty, or his commissioners.

On such days, the house may also receive messages from the lords;

or, on days appointed for the trial of articles of impeachment exhibited by the commons.

act, and to enter the same upon their journals, and to give necessary orders and directions thereupon; and also permits the alteration or amendment of returns by the clerk of the crown, by order of the house. It also authorizes the house, previous to reading such order, to postpone it, for the purpose of attending his majesty, or his majesty's commissioners, in consequence of a message from him or them, signified to the house in the usual manner.

The stat. 32 Geo. 3. c. 1. (a), authorizes the house, on the day appointed for taking into consideration any petition complaining of an undue election or return, or desiring to oppose any right of election, or of appointing a returning officer or officers, which shall have been deemed valid by the determination of any select committee, previous to the reading the order or orders for that purpose, to receive any message or messages from the lords. It also authorizes the house, on the days appointed for the trial of any articles of impeachment by the commons, before the lords in parliament, previous to the reading any such order or orders, to proceed to any business that may be necessary for the purpose of carrying on the prosecution of such impeachment.

(a) For this stat. see *ante*, 41.

There are also other exceptions, which grow out of the same anxiety of the legislature which led to the original restriction, namely, those which relate to the business of a call of the house, or to any resolutions or orders for the purpose of enforcing the attendance of members. These exceptions depend upon the stat. 36 Geo. 3. c. 59. § 1. (a), which will be mentioned when treating of the ballot.

The stat. 36 Geo. 3. c. 59. § 2. (b) provides, that the house, on any day when such petition or petitions are ordered to be taken into consideration, is not to proceed to any other business (other than such as may, by act of parliament, be proceeded on, previous to the reading the order of the day for taking such petition or petitions into consideration), until there be an attendance of an hundred members, or until the number of forty-nine, not set aside nor excused, shall be completed, other than and except the calling over the house; adjourning such call, or ordering a call on a future day, and making such orders relative thereto as they shall think fit, or such other orders as to them shall seem expedient for enforcing the attendance of members on the business of the house.

Sect. 4.

Petitions in general.

On days appointed for taking petitions into consideration, house may proceed to business relating to a call of the house.

See *post*, sec. 7.

On days appointed for taking election petitions into consideration, the house is not to proceed to other business, except business relating to a call of the house, or to enforcing the attendance of members (unless in the cases before-mentioned), until there be an attendance of 100 members, or until the number of 49, not set aside or excused, can be completed.

(a) For this stat. see *ante*, 44. (b) For this stat. see *ante*, 47.

Sect. 5.

Petitions in
general.

At time ap-
pointed for
taking peti-
tions into con-
sideration, the
serjeant at
arms is to
require attend-
ance of mem-
bers.

SECTION 5. *Of enforcing the attendance of members when election petitions are to be taken into consideration.*

AT the time appointed for taking a petition, complaining of an undue election or return, into consideration, and previous to the reading the order of the day for that purpose, the serjeant at arms, in conformity to the stat. 10 Geo. 3. c. 16. § 4. (a), is to go with the mace to the places adjacent, and require the immediate attendance of the members on the business of the house.

And by the same clause, the proceedings of all committees, subsequent to such notice from the serjeant at arms, are to be void.

This would apply to petitions of the *first* class; but the adoption of the pre-existing general regulations, by the subsequent statutes, would extend its operation to the other classes.

There have been various resolutions of the house, instances of which there were on the 16th

See *ante*, 257.

8 Journ. 163.
68, 298, 321,
23, 339.

(a) For this stat. see *ante*, 7.

and 17th February; 17th, 18th, and 23d March; 20th April, 1814; and 23d May, 1815; enforcing the attendance of members, when select committees were to be appointed, by ordering that the speaker should direct that the names of members who should be absent should be set aside, and that a list should be reported at such time as the house should appoint; and that the members for whose non-attendance sufficient excuse should not be made, should be taken into custody. And the names of defaulters have been accordingly reported, and the members ordered to attend; whereupon some, who could justify their absence, were excused, and others ordered into custody (a).

Sect. 5.

Petitions in
general.

69 Journ. 195.

70 Journ. 315.

SECTION 6. *Of the non-attendance of parties at the time appointed for taking an election petition into consideration.*

WITH respect to petitions in general:

The parties upon a petition are bound to attend at the time appointed by the house; and

(a) See the Journals, 18th and 22d February, 1813; 28th April, and 19th May, 1814.

Sect. 6.

Petitions in
general.

Ante, 210.

in the event of petitioners neglecting so to do, their recognizances will be forfeited, under the stat. 28 Geo. 3. c. 52. § 9. as before stated; and the petition will fall to the ground, under the following provisions:

If, within an hour of the time appointed, the petitioner or petitioners, or some or one of them, shall not appear, &c. the order for taking the petition into consideration is to be discharged, and the petition to be no further proceeded upon.

By the stat. 28 Geo. 3. c. 52. § 13. (a), if, within one hour after the time fixed, in pursuance of the statutes 10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84. and of that act, for calling in the parties, for the purpose of proceeding to the appointment of the select committee, the petitioner or petitioners signing the petition, or some one or more of them, shall not appear by himself or themselves, or by his or their counsel or agents, the order for taking the petition into consideration is to be discharged, and the petition is not to be any further proceeded upon.

Where petitioners fail to appear at the time

By the stat. 53 Geo. 3. c. 71. § 9. (b), in cases, where the petitioner or petitioners shall

(a) For this stat. see *ante*, 29.

There have been several instances in which petitioners have appeared, and conducted their own cases. In the two *Southwark* cases, in 1796, Mr. *Tierney*, the petitioning candidate, did this, *Clifford*, 2. 130; as did Mr. *Becket*, the petitioning candidate in the

case of *Newcastle-under-Lyne*, 1803, 1 *Peck*. 489; and as did also Sir *Thomas Turton*, also petitioning candidate in the *Southwark* case, 1804, 2 *Peck*. 149; and Mr. *Hunt*, who petitioned in the case of *Bristol*, 25th Feb. 1813. 68 *Journ*. 221. Sect. 7.

(b) For this stat. see *ante*, 58.

Sect. 6.

fail to appear before the house, by himself or themselves, or by his or their counsel or agents, at the time fixed for the appointment of the select committee (the house not having permitted the petition to be withdrawn), and the order for the consideration of such petition shall be thereupon discharged, in pursuance of the 28 Geo. 3. c. 52., the party or parties who shall attend the house in opposition to such petition are to be intitled to recover from the petitioner or petitioners, the full costs and expenses incurred by reason of such petition (which, by the 53 Geo. 3. c. 71. § 10. (a), are to be all reasonable costs, as between attorney and client.)

Petitions in general. fixed for the appointment of the select committee, the house not having permitted the petition to be withdrawn, and the order being discharged, the party contending in opposition to the petition, is to recover costs against the petitioner.

It happened, in the following case, that the petitioner was confined for debt; but his attendance was authorized nevertheless:

London, 1804.—The petitioner being a prisoner for debt in the Fleet prison, at the time of the trial of his petition, the chairman, on the application of his counsel, issued a warrant to him to attend in person before the committee.

2 Peck. 271. Where petitioner was in prison for debt, a warrant was issued for his attendance.

(a) For this stat. see *ante*, 58.

Sect. 7.

Petitions in
general.

SECTION 7. *Of the ballot for the formation of a select committee.*

WITH respect to petitions in general:

The provisions of the law, with respect to the ballot, were in the beginning applicable to petitions of the *first* class only. By adoption, however, they now apply equally to petitions of the other classes, by virtue of the statutes 25 Geo. 3. c. 84. § 11. (a), and 28 Geo. 3. c. 52. § 32. (b). It will not, therefore, be necessary to discriminate to which sort of petition each particular enactment may have at first applied.

Before we come to the proceedings upon the actual ballot, it is to be observed, that the legislature has taken such precautions as are best calculated to prevent any unnecessary delay in these proceedings, and to prevent the possibility of any improper contrivance in the management of them.

The stat. 10 Geo. 3. c. 16. § 16. (c), directs,

- (a) For this stat. see *ante*, 21.
- (b) For this stat. see *ante*, 37.
- (c) For this stat. see *ante*, 11.

that the names of all the members written or printed and rolled up (in the manner which will be presently stated), shall, previously to the day appointed for taking the petition into consideration, be prepared by the clerk or clerk assistant, and by him put into a box or parcel, in the presence of the speaker, with an attestation by the clerk or clerk assistant, purporting that the names of all the members were by him put therein; which said box or parcel the speaker is to seal with his own seal; and to annex an attestation thereto, signed by himself, purporting that the said box or parcel was made up in his presence in the manner directed by the act.

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Petitions in general.

post, 270.

Names of all the members to be previously prepared by the clerk or clerk assistant of the house, and by him put into a box or parcel, to be attested and sealed by the speaker.

And as a further check against any contrivance, the same clause further directs, that as soon as the parties shall be withdrawn (when the ballot shall have taken place in the manner about to be stated), and before the house shall enter on any other business, any member may require that the names of all the members which remain undrawn shall be drawn and read aloud by the said clerk or clerk assistant.

After the ballot shall be finished, as soon as the parties shall be withdrawn, and before the house proceeds on other business, any member may require that the names undrawn shall be drawn and read aloud.

The time having been fixed for the consideration of an election petition, and the proper notices and orders having been given to the parties on either side, they are to attend accord-

At time appointed for taking petition into consideration, on return of serjeant at

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Petitions in
general.

arms, house to
be counted.

If less than 100
members pre-
sent, the order
for taking pe-
tition into con-
sideration to
be adjourned
to the next day
(unless that
be *Sunday*,
Christmas-day,
or *Good Friday*.)

The house is
to adjourn to
such day.
And so from
day to day, till
there should
be 100 mem-
bers present
at the reading
the order of the
day for taking
the petition
into consider-
ation.

If on the day
preceding

ingly, by themselves, their counsel or agents, in
order that the house may proceed to the forma-
tion of the select committee.

At the appointed day and hour, the serjeant
at arms having required the attendance of the
members, as before stated, and being returned
to the house, the stat. 10 Geo. 3. c. 16. § 4. (a)
directs, that the house should thereupon be
counted, and that if there should be less than an
hundred members present, the order for taking
the petition into consideration is to be imme-
diately adjourned to a particular hour on the
following day, except it should be *Sunday*, or
Christmas-day (to which exception *Good Friday*
was subsequently added by the 28th Geo. 3. c.
52. § 10. (b).

The above clause of the 10th Geo. 3. c. 16.
further directs, that in such case the house shall
adjourn to such day, and upon that day proceed
in the same manner; and so on from day to day,
till there should be an attendance of one hun-
dred members at the reading the order of the
day to take the petition into consideration.

If it shall happen, that on the day immedi-

(a) For this stat. see ante,
7.

(b) For this stat. see ante,
28.

ately preceding *Christmas-day*, *Whitsunday*, or *Good Friday*, after reading the order of the day for taking the petition, it shall be found that there are not an hundred members present, or that the number of forty-nine members, not set aside or excused (the grounds for which will be hereafter explained) cannot be completed, the stat. 28th Geo. 3. c. 52. § 11. (a), authorized the house to direct that such order should be adjourned for any number of days, and the house was by that statute to have been then immediately adjourned to the day and hour to which such order should have been adjourned.

An exception has been made to the necessity of an immediate adjournment in the above cases, by the stat. 36 Geo. 3. c. 59. § 1. (b), if, after counting the house, there should be less than an hundred members present; or if the number of forty-nine members (not set aside or excused) cannot be completed, the house is authorized, after the order or orders for taking such petition into consideration shall have been adjourned, to proceed in like manner as they might have proceeded if there had been no such order, upon any order of the day for the call of the house, which shall have been previously fixed for that day, and to direct that the house, in pursuance

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Petitions in general.

Christmas-day, Whitsunday, or Good Friday, there are not 100 members present, or if 49 not set aside or excused cannot be completed, the house may be adjourned for any number of days.

If after counting the house, there are not 100 members present, or if 49 not set aside or excused cannot be completed, the house (after adjourning the order for taking the petition into consideration) may proceed upon any order for a call of the house fixed for that day, to direct that the house may be called over, or to adjourn the latter order, and to

(a) For this stat. see *ante*, 28. (b) For this stat. see *ante*, 44.

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Petitions in
general.
make correct
or proper
orders.

And if there
be no order of
the day for a
call of the
house, may
order one for a
future day,
and make any
orders relating
thereto, or for
enforcing at-
tendance of
members, and
then adjourn.

If no such pro-
ceedings shall
take place, or
the house shall
be adjourned
for want of
members, the
house is to be
deemed to be
adjourned to
the day to
which order
or orders ad-
journed.

House not to
proceed on
these matters
till doors un-
locked, &c.

of such order, should be then called over, if they should so think fit, or to direct that such latter order should be adjourned to such future day as they should appoint, and in either of such cases to come to such resolutions, and make such orders relating thereto as are usual, or as to them shall seem meet.

And the same clause, after authorizing the house, in case there should be no order of the day for a call of the house for that day, to order one for a future day, and to make orders relating thereto, or other orders for enforcing the attendance of members on the business of the house, and directing that it should then adjourn, and so from time to time as occasion should require; directs, that in case no such proceedings with respect to any call of the house, or the other matters before-mentioned, shall take place, or, if in the course of such proceedings the house shall be adjourned for want of members, it is to be deemed and taken, and to be declared to be adjourned to the same day, to which such order or orders shall have been adjourned.

The same clause further provides, that in case the forty-nine members (not set aside or excused) cannot be completed, the house shall not proceed upon any of the matters therein before-

mentioned, until the door of the house is unlocked, and the parties, their counsel, or agents, are withdrawn from the bar.

Having inquired into the provisions for cases where the ballot cannot take place, we now come to the regulations under which the ballot is conducted:

If, after summoning the members and counting the house, at the day and hour fixed for the consideration of the petition, one hundred members shall be found to be present, the stat. 10 Geo. 3. c. 16. § 5. (a) directs, that the petitioners, by themselves, their counsel or agents, and the counsel or agents of the sitting members, shall be ordered to attend at the bar, and that then the door of the house shall be locked, and that no member shall be suffered to enter into or depart from the house, until the petitioners, their counsel, or agents, and the counsel or agents for the sitting members, shall be directed to withdraw.

And by the same clause, when the door of the house shall be so locked, the order of the day is to be read, and the names of all the members of

Sect. 7.

Petitions in general.

If upon counting the house at the day and hour fixed for the consideration of the petition 100 members are present, the petitioners, their counsel or agents, and the counsel or agents of the sitting members, are to attend at the bar, the door of the house is to be locked, and until they should be directed to withdraw, no member is to enter or depart.

The order of the day is then to be read, and the names of all the mem-

(a) For this stat. see *ante*, 8.

Sect. 7.

Petitions in general.

Members of the house, written on pieces of parchment or paper, to be put into boxes or glasses, from whence they are to be drawn by the clerk assistant of the house, and delivered to the speaker, who is to read them to the house; and so on till 49 names are completed.

If at the time of balloting, the number of 49 members (not set aside nor excused) cannot be completed, the house is to proceed as where there are not 100 members present upon counting the house.

the house, written or printed on distinct pieces of parchment, or paper, as nearly as may be of equal size, and rolled up in the same manner, are to be put in equal numbers into six boxes or glasses, to be placed on the table for that purpose, and are to be there shaken together. The clerk or clerk assistant attending the house is then publicly to draw out of such six boxes or glasses, alternately, such pieces of parchment or paper, and to deliver the same to the speaker, to be by him read to the house: and this course is to be continued until forty-nine names of the members then present shall be drawn.

There are some grounds upon which members whose names may be drawn are intitled to be excused from serving. These will presently be explained; as will also the appointment of the two members, who are to be added by nomination.

It may happen, that upon the ballot the number required to form the select committee cannot be completed; in which case, the stat. 11 Geo. 3. c. 42. § 3. (a) directs, that if at the time of drawing by lot the names of the members, in manner prescribed by the 10 Geo. 3. c. 16., the number of forty-nine members, not set aside nor excused, cannot be completed,

(a) For this stat. see *ante*, 16.

the house is to proceed in the manner they are directed by that act to proceed in case there be less than one hundred members present, at the time prescribed for counting the house, and so from day to day as often as the case shall happen.

Sect. 7.

SECTION 8. *Of the ballot for the formation of select committees, where more than one election petition stands for consideration on the same day.*

WITH respect to petitions in general :

It happens, that in some instances several petitions are to be taken into consideration on the same day : This case is contemplated, and particularly provided for by the stat. 42 Geo. 3. c. 84.

That statute, by § 1 (a), directs that where two or more petitions, under the stats. 10 Geo. 3. c. 16. 11 Geo. 3. c. 42. 25 Geo. 3. c. 84. or 28 Geo. 3. c. 52. are to be taken into consideration on the same day; the house, after summoning

Petitions in general.

Where two or more petitions are to be taken into consideration on the same day, after the house shall have been counted, the petitioners

(a) For this stat. see *ante*, 47.

Sect. 8.

and parties to attend within the house at the same time, before the door shall be locked; and after 49 names shall have been drawn, and completed to form the first committee, to proceed in like manner to form the second, third, fourth, and such other number of committees as may be requisite; and such committees are to be appointed according to the same rules as in the case of forming one committee only.

its members, and after they shall have been counted, may order all the petitioners, and other parties, by themselves, their counsel or agents, to attend within the house at the same time, before the door shall be locked; and after the list of forty-nine names of members present shall have been drawn by lot, and completed in order to form the first committee, to proceed forthwith, and before the door of the house shall be opened (except for the purpose directed by that act), to draw by lot, and complete in like manner out of the same boxes or glasses, another list of forty-nine names, of the remaining members present, in order to form the second committee; and in the same manner to draw by lot and complete successive lists of forty-nine names of the remaining members present, in order to form the third and fourth, or such other number of committees as may be requisite; and the select committees for the trial of such petitions, and the nominees, are to be appointed according to the same rules and regulations as where only one list is formed.

Lists not to be formed for more than one committee, unless 120 members present on counting the house;

The same statute, by § 2 (a), provides, that successive lists are not to be so formed for more than one of such successive committees, unless

(a) For this stat. see *ante*, 49.)

one hundred and twenty members shall be present in the house at the time of counting it; nor to form successive lists for more than two such committees, unless two hundred members shall then be present; nor for more than three such committees, unless two hundred and seventy members shall be present; nor for more than four such committees, unless three hundred and sixty members shall be present; nor for more than five such committees, unless four hundred and sixty members shall be present.

Sect. 8.

nor for more than two committees, unless 200 members present; nor for more than three committees, unless 270 present; nor for more than four, unless 360 present; nor for more than five committees, unless 460 present.

If two or more petitions are to be taken into consideration, on the same day, and there are not members sufficient to form successive lists, the house may form lists, as far as they are enabled, by the number present:

and may afterwards proceed to other business; and the orders for taking the remaining petition or petitions into consideration are to be adjourned, as where petitions cannot be taken into consideration for want of a sufficient attendance.

The stat. 42 G. 3. c. 84. § 5. (a) provides that if two or more petitions are to be taken into consideration on the same day, and it shall happen by reason that a sufficient number of members liable to serve are not present in the house, that successive lists cannot be formed upon all such petitions; yet the house may, nevertheless, proceed to form the list or lists, and appoint the select committees, upon one or more of such petitions, as far as they are enabled to do so, by the number of members present; and may afterwards proceed to other business; and the order or orders for taking the remaining petition or petitions into consideration shall be adjourned, as in cases where petitions cannot be taken into consideration, for want of sufficient attendance.

(a) For this stat. see *ante*, 50.

Sect. 9.



SECTION 9. *In what cases members are disqualified or excused from serving on select committees.*

Petitions in
general.

WITH respect to petitions in general:

The attendance of members at the formation of select committees is compulsory (as has been seen from the regulations which are made to ensure it); and the serving thereupon is a duty, from which those who may be chosen upon the ballot cannot withdraw themselves, except in some few cases.

In some instances, however, the law disqualifies them; and in some others exonerates them from serving, if they are inclined to avail themselves of their excuses.

Members having voted at the election complained of in the petition, or being themselves petitioners, or being petitioned against, or whose return shall not have been brought in 14 days, if drawn, to be set aside.

By the stat. 10 Geo. 3. c. 16. § 6. (a), if the name of any member, who shall have given his vote at the election, complained of in the petition, (upon which the ballot is taking place;)—or, who shall be a petitioner, complaining of an undue election or return;—or, against whose return a petition shall be then depending;—or, whose return shall not have been brought in fourteen days, shall be drawn, his name is to be set

(a) For this stat. see *ante*, 8.

aside, with the names of those who are absent from the house.

Sect. 9.

Petitions in general.

By § 7 (a) of the same act, if the name of any member of sixty years of age, or upwards, be drawn, he is to be excused, if he shall require it, and verify the cause of such requisition upon oath.

Member sixty years of age, or upwards, to be excused, if he require it, and verify the excuse upon oath.

The same stat. by § 8 (b), provides that if the name of any member, who has served on such select committee, during the same session, be drawn, he is, if he requires it, to be excused from serving again in any such select committee, unless the house shall, before the day appointed for taking the petition into consideration, have resolved that the number of members, who have not served on such select committee, in the same session, is insufficient to fulfil the purposes of the act, respecting the choice of such select committee.

Members having served on select committees during the same session, to be excused, if they require it, unless the house shall have resolved that the number of members not having served in that session is insufficient.

By § 9. (c) of the same act, no member who after having been appointed to serve in any such select committee, shall, on account of in-

No member having been appointed on a select committee, and excused from attending throughout, is to be deemed to have served.

9. (a) For this stat. see *ante*, case upon this ground, see *Colchester*, 18th Feb. 1813.

(b) For this stat. see *ib.*— 68 Journ. 173.

For an instance of an ex- (c) For this stat. see *ante*, 9.

Sect. 9.

Petitions in
general.

Any other
member offer-
ing and veri-
fying any
other excuse,
on oath, the
substance to be
taken down,
that it may be
entered on the
journals, and
the opinion of
the house
taken:

If the house
shall resolve
that he can-
not serve,
without ma-
nifest detri-
ment, he is to
be excused.

Members
holding great
offices usually
excused.

Where mem-
bers are set
aside, or ex-
cused, the
names of others
are to be
drawn, who

ability or accident, have been excused from at-
tending the same throughout, is to be deemed
to have served on any such select committee.

And by § 10 (a), if any other member shall
offer and verify upon oath any other excuse,
the substance of the allegations so verified is
to be taken down by the clerk, in order that
it may be entered on the Journals; and the
opinion of the house is to be taken thereon;
and if the house shall resolve that such mem-
ber is unable to serve, or cannot, without
great and manifest detriment, serve in such
select committee, he is also to be excused from
serving.

Under this provision, it is usual to excuse
members, who hold high and important offices,
with their attendance upon which, the serving on
a select committee must evidently interfere (b).

The stat. 10 Geo. 3. c. 16. § 11. (c) directs,
(and this applies by adoption in all cases) that
instead of the members, so set aside or excused,

(a) For this stat. see *ante*, 9. taries of state, were drawn,
they were severally excused.

(b) Thus, in the case of 68 Journ. 163.—So in that of
Great Grimsby, 16th Feb., 1813, where Mr. *Vansittart*,
the chancellor of the exche- *Denbigh*, 11th March, 1813,
quer, and Lord *Castlereagh*, Sir *John Nicholl*, the Dean of
one of the principal secre- the Arches, was excused. 69
Journ. 297.

(c) For this stat. see *ante*, 9.

the names of other members are to be drawn ; and these may in like manner be set aside or excused, and others drawn to supply their places, until the whole number of forty-nine members, not liable to be set aside or excused, shall be complete.

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Petitions in general.

may also be set aside, or excused in like manner.

By 10 Geo. 3. c. 16. § 15. (a) if upon the drawing out the name of any member by lot, the petitioners, or sitting members, or their agents, shall declare that such member is intended to be one of the two nominees to be nominated by them respectively, and if he shall consent to such nomination, his name is to be set aside, and unless objected to, he is to serve as such nominee, and the name of another member is to be drawn to supply his place.

Members intended for nominees, and so declared, and consenting thereto, to be set aside.

There is a corresponding provision for the case where one or more petitions are to be taken into consideration on the same day.

The stat. 42 Geo. 3. c. 84. § 4. (b) enacts and provides, that if upon drawing out the name of any member, by lot, upon one of such petitions, the petitioners, or sitting members, or the agents, who shall have been ordered, under

Where several petitions are to be taken into consideration on the same day,

(a) For this stat. see *ante*, 11.

(b) For this stat. see *ante*, 50.

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Petitions in general.

members, intended for nominees upon any of such petitions, and declared so to be, and consenting, to be set aside.

Post, 281. 283, 284.

Members excused upon grounds applying in respect of one petition, may be drawn upon another.

or by virtue of that act, to attend within the house upon any other petition, shall declare that such member is intended to be one of the two nominees to be nominated by them respectively; and, if such member shall consent to such nomination, his name is to be set aside, and another member is to be drawn to supply his place, to complete the number of forty-nine to be drawn by lot.

It will be seen that persons thus pointed out for nominees may be objected to or excused upon the same grounds as the other members.

There may be some ground of objection or excuse, applying to a member in respect of one petition, but not of others; wherefore in cases where the house proceeds to form successive lists, in order to form two or more committees, under the stat. 42 Geo. 3. c. 84.; it is provided by § 3. (a) of that statute, that if any member, whose name is drawn, shall be excused for some reason, which applies especially to any one petition, his name is to be returned into the box or glass from whence it has been taken, so that it may be again drawn by lot upon any of the following petitions.

With respect to petitions of the *fourth* class (b)

(a) For this stat. see *ante*, 50.

(b) For this class, see *ante*, 84.

One ground upon which the name of a member drawn is to be set aside, applies exclusively in petitions of this class:

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Petitions of
4th class.

It being considered to be unfit that any member having served on a select committee, which has reported their determination, with respect to the right of election or of choosing, nominating, or appointing a returning officer or officers, should also serve on a select committee, to be appointed to try the merits of a petition, opposing such determination, the stat. 53 Geo. 3. c. 71. § 16. (a) enacts, that if upon the appointment of any such last-mentioned select committee, the name of any member shall be drawn, who shall have served on such former committee, and was present at the time of such determination, his name is to be set aside.

Members having served upon committee, reporting the right of election, or of choosing returning officer or officers not to sit upon select committee, appointed to the petition of appeal against such right.

SECTION 10. *Of the appointment of nominees to serve upon select committees.*

WITH respect to petitions in general:

Petitions in
general.

The distinctions necessary to be noticed under this head are not connected with the difference of the classes, but depend upon other circumstances which will appear herein.

(a) For this stat. see *ante*, 61.

Sect. 10.

Petitions in
general.

The only absolute selection, which the law allows of, in the formation of select committees, is that which regards the nominees. The privilege is given to the respective parties upon an election petition, if there be two such parties only, of naming, each one member to be added to the number drawn by lot;—and in cases where this privilege is not availed of, or where there are more than two such parties, two members are added; in the former case, by lot, and by the selection of the other members of the committee, in the latter.

The rules, which regard the appointment of nominees, depend upon several statutory provisions, which have been made from time to time, as it was found expedient to provide for the different cases.

Members to be
appointed no-
minees must be
present in the
house.

It may be observed here, that each of the statutes, regulating such appointment, requires that any member to be named should be present.

When the
number of 49
members
not set aside,
or excused, is
complete, one
member is to
be named on
the part of pe-
titioners,
and another
on the part of

By the stat. 10 Geo. 3. c. 16. § 11. (a), when the number of forty-nine members (before spoken of), not liable to be set aside nor excused, is complete, the petitioners, or their agents, are to name one, and the sitting members, or their agents, are to name another, from among the

(a) For this stat. see *ante*, 9.

members then present, whose names shall not have been drawn, to be added to those who shall have been chosen by lot.

Sect. 10.

Petitions in general.

the sitting members to be added to the 49

Ante, 276, 277.

It has been already seen, that if, upon the ballot, the name of a member who is intended by either party for a nominee be drawn, upon a declaration to that effect by such party, and upon the member pointed out consenting to such nomination, his name is to be set aside, and unless objected to, he is to serve as a nominee.

The members who are thus nominated are not less liable to be objected to, than those who are chosen by lot; nor is it compulsory upon them to serve, if they are not inclined to consent to it; the above statute, by § 12 (*a*), having provided that either of the members so nominated should be set aside for any of the same causes as those chosen by lot, or on requiring it should be excused from serving on the select committee; in which cases, the party nominating the member so set aside or excused is to nominate another in his stead, and so as often as the case shall happen, until his nominee is admitted.

Members proposed as nominees may be set aside for the same causes as those chosen by lot; or may be excused on requiring it. In which cases the party nominating is to nominate again.

(See also, *post*, 283, 284.)

It may happen that the parties do not, either

(*a*) For this stat. see *ante*, 10.

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Petitions in
general.

If parties do
not appoint
nominees, such
nomination to
be supplied
by lot.

Members
drawn in such
case may be set
aside, or ex-
cused, as the
other forty-
nine.

or both, avail themselves of their power of the appointment of a nominee or nominees. Wherefore the stat. 10 Geo. 3. c. 16. § 15. (a) directs, that if the petitioners or sitting members, or their agents, shall not respectively nominate a member then present, who shall be admitted according to the directions of that act, the want of such nomination is to be supplied by drawing out, instead thereof, the name of one or two members as the case shall require, who are to be drawn by lot in the same manner, and subject to the like objections and excuses as the forty-nine already drawn by lot, and are to be added to the lists of the forty-nine members, and are to be liable to be struck off in the same manner; leaving always the number of fifteen members in the whole, and no more, as a select committee.

If there be more than two parties concerned in an election petition, the law as before stated would be insufficient to secure to each the advantage contemplated by the above provisions. Such case, however, was speedily provided for by the legislature.

Where there
are more than

By the stat. 11 Geo. 3. c. 42. § 6. (b) if, on a

(a) For this stat. see *ante*, 11.
(b) For this stat. see *ante*, 17.

complaint by petition of an undue election or return, there shall be more than two parties before the house on distinct interests, or complaining or complained of upon different grounds, whose right to be elected or returned may be affected by the determination of the select committee, in such case neither of such parties (there being more than two) is to be permitted to name a member to be added to those drawn by lot; but as soon as the list of thirteen members shall be returned by the parties to the house, such thirteen members are to withdraw, and are, by themselves, to choose two members then present in the house, whose names shall not have been drawn, to be added to the thirteen (*a*); and are, within one hour from the time of their withdrawing, to report the names of such two members to the house; which two members are to be liable to be set aside, on the like objections for which nominees may be set aside by virtue of the stat. 10 Geo. 3. c. 16.—And in case such two members, or either of them, shall be set aside for any of such causes, then such thirteen members are to choose one or two other members, as the case shall require, until two

Sect. 10.

Petitions in general.

two parties on distinct interests, or complaining or complained of on different grounds, whose right to be elected or returned may be affected by determination of select committee, neither party, but the thirteen members are to choose two members as nominees, and to report them within an hour to the house.

Such members may be set aside, or excused, as under 10 Geo. 3. c. 16. (*Ante*, 281.)

And thirteen members to choose in their room, until two members are chosen, against whom there are none of the objec-

(*a*) For an instance, see *Colchester*, 18th February, 1813, where there were more than two parties before the house, and the interests of the two

sitting members being separate and distinct from each other, the nominees were appointed as above. 68 Journ. 173.

Sect. 10.

Petitions in
general.

tions in the 10
Geo. 3. c. 16.

(ante. 274.)

or any of the
objections for
which the
members
chosen by
lot may be set
aside.

members are chosen, against whom none of the objections to nominees mentioned in the 10 Geo. 3. c. 16. shall be taken and allowed.

The stat. 53 Geo. 3. c. 71. § 20. (a) alludes, by its recital, to this latter provision, and enacts, that either of the members so chosen shall and may be set aside for any of the same causes as those chosen by lot.

The names of the two members thus appointed are thereupon by the above clause of the stat. 11 Geo. 3. c. 42. (§ 6.) to be added to such list of the thirteen members; and the fifteen are to be sworn at the table, and they are to be the select committee.

Another case which required to be provided for, was, that of the appointment of nominees, in the case of the non-appearance of the sitting member, or other party opposing the petition at the time appointed for taking it into consideration.

With this view the stat. 28 Geo. 3. c. 52. § 14. (b) has directed that if within one hour after the time fixed for calling in the respective par-

If within an
hour after the
time for calling
in the parties,
the sitting

(a) For this stat. see *ante*,
62.

(b) For this stat. see *ante*,
29.

ties, their counsel or agents, for the purpose of proceeding to the appointment of a select committee, the sitting member or members, or other party or parties opposing the petition, shall not appear himself or themselves, or by his or their counsel or agents, or if at the time so appointed there shall be no party before the house opposing the petition; in every case where the party opposing the petition would be empowered by the statutes 10 Geo. 3. c. 16. and 11 Geo. 3. c. 42. to nominate one member to be added to the thirteen, the thirteen are, from among the persons present in the house at the time of drawing the names of the members, to choose one person to supply the place of the member to have been so nominated, in the same manner as directed by the stat. 11 Geo. 3, c. 42. where there are more than two parties on distinct interests.

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member or members opposing the petition, or if there be no party before the house opposing the petition, in every case where the party opposing the petition would be empowered under the 10 Geo. 3. c. 16. and 11 Geo. 3. c. 42. to appoint a nominee, the 13 are to choose a nominee.

And by § 15 (*a*), the course is to be the same where a party shall waive his right of appointing a nominee (*b*).

So, where a party waives his right of appointing a nominee.

The remaining provisions of the law go to regulate the time and order of choosing nomi-

(*a*) For this stat. see *ante*, 30. *Loft*, the petitioner, declined nominating a member to

(*b*) *Great Grimsby*, 16th Feb. 1813, Major General serve on the select committee, 68 Journ. 163.

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general.

nees, in cases where there are several petitions before the house at the same time, in which the nominees are to be chosen by the thirteen members.

Ante, 278.

If more than two parties be-
fore the house
on distinct in-
terests, or
complaining
or complained
of on different
grounds, the
13 members are
not to choose
nominees until
all the other
committees
ballotted for on
that day shall
have been
sworn.

If two or more
committees be
appointed on
the same day,
on petitions
where there are
more than two
parties before
the house, the
committee first
ballotted for is
to have the
preference in
choosing no-
minees.

The stat. 42 Geo. 3. c. 84, after making the provision by § 4, already noticed, whereby, if the name of any member be drawn by lot upon one of such petitions, upon the declaration of either of the parties ordered to attend upon any other petition, that such member is intended to be a nominee, and upon his consent thereto, his name is to be set aside, and another drawn; by § 7 (*a*), provides and enacts that when on a complaint by a petition of an undue election or return, there shall be more than two parties before the house on distinct interests, or complain-
ing or complained of upon different grounds, the thirteen members returned to the house, by virtue of the stat. 11 Geo. 3. c. 42, are not to choose their nominees, until all the other select committees to be ballotted for on that day shall have been sworn:—And the same clause also provides, that if two or more committees shall be appointed on the same day, to decide on any petition whereon there shall so be more than two parties before the house, the commit-

(*a*) For this stat. see *ante*, 51.

tee which shall have been first ballotted for shall have the preference in choosing nominees.

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general.

By the stat. 47 Geo. 3. sess. 1. c. 1. § 2. (a), whenever on any complaint by petition under any act or acts for the regulation of the trials of controverted elections, or returns, it shall happen that the thirteen members returned to the house under the direction of those acts, or any or either of them, shall be intitled by virtue of any regulations or provisions on any of such acts, to choose two members or one (as the case may require) to be added to the thirteen members for the completion of the committee to try such petition, such thirteen members are not to choose such members or member, until all the other select committees to be ballotted for on that day (in the appointing of which the parties before the house are to name two members to be added to the members to be drawn by lot) shall have been sworn, if such committees, or any of them, can be completed.

Where nominee, or nominees, are to be chosen by the 13 members, they are not to choose such nominee or nominees until all the other select committees to be ballotted for on that day, where the parties are to appoint the nominees, shall have been sworn, if such committees or any of them can be completed.

And the same clause further provides, that if two or more select committees shall be ballotted for on the same day, for the completion of which, the thirteen members returned to the house shall be entitled to choose two members or one

If two or more committees are to be ballotted for on the same day, wherein the 13 members are to choose a nominee or nominees, the 13

(a) For this stat. see *ante*, 52.

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general.

on the commit-
tee first ballot-
ted for are to
have the pre-
ference in
choosing, and
so on succes-
sively.

member, then the thirteen members on the committee or committees which shall have been first ballotted for, are to have the preference successively in choosing such member or members for the completion of such committee or committees.

SECTION 11. *Of reducing the ballotted list to form a select committee.*

WITH respect to petitions of the first class(a):

The names of forty-nine members (exclusive of those who may have been set aside or excused) having been drawn by lot, the next proceeding is to reduce them to such number as is requisite to form the select committee, viz. to the number of thirteen exclusive of the two nominees (who shall have been added as before stated).

When 49 mem-
bers shall have
been chosen by
lot, and two
nominees add-
ed, the door of
the house is to

By the stat. 10 Geo. 3. c. 16. § 13. (b), as soon as the forty-nine members shall have been chosen by lot, and the two members to be added shall have been nominated, the door of the house

(a) For this class see *ante*,
82.

(b) For this stat. see *ante*,
10.

is to be opened, and the house may proceed upon any other business (the parties upon the petition withdrawing.) And by § 14 (a), of the act, on their so withdrawing, the house is to continue sitting; and the fifty-one members so chosen and nominated are not to depart the house, till the time for the meeting of the select committee shall be fixed.

The following is the mode of reducing the number of members under the above clause of the 10 Geo. 3. c. 16. § 13. which takes place at the same time, that the door of the house is opened. Lists of the forty-nine members chosen by lot are to be given to the petitioners, their counsel, or agents, and the counsel or agents for the sitting members, who are immediately to withdraw, together with the clerk appointed to attend the select committee; and such petitioners and sitting members, their counsel or agents, beginning on the part of the petitioners, are alternately to strike off one of the forty-nine until the number be reduced to thirteen.—And by the same clause, such clerk is within one hour at farthest from the time of the parties withdrawing to deliver into the house the names of the thirteen members then remaining.—And

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Petitions of
1st class.

be opened, and the house may proceed on other business. The house is then to continue sitting, and the 51 members are not to depart till the meeting of the committee is fixed.

Lists of the 49 members to be given to the petitioners, their counsel or agents, and the counsel or agents for the sitting members, who are to withdraw with the clerk appointed to attend the committee, and beginning on the part of the petitioners alternately to strike off one of the 49 until the number be reduced to 13.

Clerk to deliver in the names of such

(a) For this stat. see *ante*, 11.

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Petitions of
1st class.

13 members
within an hour.

Such 13 mem-
bers with the
two nominees
are to be sworn
at the table.

Their oath.

Which is to be
administered
by the clerk or
clerk assistant.

such thirteen members, together with the two members nominated (as before stated), are by the same clause to be sworn at the table “ *well* “ *and truly to try the matter of the petition re-* “ *ferred to them, and a true judgment to give* “ *according to the evidence;*” (such oath being by § 29 (a) to be administered by the clerk or clerk assistant in the same manner as the oaths of allegiance and supremacy are administered in the house).

The 15 so ap-
pointed are to
be the select
committee to
try the merits
of the return or
election.

The fifteen members thus appointed become the select committee to try and determine the merits of the return, or election, appointed by the house to be that day taken into considera-
tion.

Where there
are more than
two parties be-
fore the house
on distinct in-
terests, or com-
plaining or
complained
of upon dif-
ferent grounds,
whose right to
be elected or
returned may
be affected,
each is to strike
off successively
from the 49 till
the number be
reduced to 13.

In cases of petitions, where there are more than two parties before the house on distinct interests, or complaining or complained of upon different grounds, whose right to be elected or returned may be affected by the determination of the select committee, each of such parties are, by the stat. 11, Geo. 3. c. 42. § 6. (b), successively to strike off a member from the forty-nine chosen by lot, until such number be reduced to thirteen, in the same manner as is done alter-

(a) For this stat. see ante,
15.

(b) For this stat. see ante,
17.

nately where there are two parties (*a*).—And for this purpose lists of the forty-nine members chosen by lot are to be given to all such parties; and the order in which such parties are to strike off is to be determined by lot after they are withdrawn from the bar.

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Petitions of 1st class.

Lists of the 49 to be given to all such parties, and the order in which they are to strike is to be determined by lot.

In cases where there are more petitions than one presented complaining of a return, or the omission of a return, on distinct interests, or complaining upon different grounds, the house is to determine under the stat. 25 Geo. 3. c. 84. § 12.(*b*), from the nature of the case, whether the returning officer or officers, or person appearing in the stead of him or them, is, together with the petitioners, to be intitled to strike off from the list of members drawn by lot, as directed by the stat. 11 Geo. 3. c. 42, in the case where there shall be more than two parties before the house, or whether the list is to be reduced by the parties severally presenting such petitions only.

Where there are more petitions than one, complaining of a return or the omission of a return, or complaining upon different grounds, the house is to determine whether the returning officer or person appearing in his stead is, together with the petitioner, to be entitled to strike off, as in the case where there are more than two parties before the house, or whether the list is to be reduced by the different petitioners only.

In cases where the parties resisting the petition do not appear in sufficient time, the stat. 28 Geo. 3. c. 52. § 14.(*c*) directs that if within

(*a*) See an instance of this proceeding, upon its being stated to the house that there were more than two parties on distinct interests. Col-

chester, 18th Feb. 1813. 68 Journ. 173.

(*b*) For this stat. see *ante*, 21.

(*c*) For this stat. see *ante*, 29.

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Petitions of
1st class.

Where parties opposing the petition do not appear within an hour after the time, or if there be no party before the house opposing the petition, the place of a party opposing the petition is to be supplied by the committee's clerk, who as often as it comes to his turn is to strike out the name standing first.

one hour after the time fixed for calling in the respective parties, their counsel or agents, for the purpose of proceeding to the appointment of a select committee, the sitting member or members, or other party or parties opposing the petition, do not appear by himself or themselves, or by his or their counsel or agents, or if, at the time appointed, there shall be no party before the house opposing the petition, the house is to proceed to appoint a select committee, to try the merits of the petition, the names of forty-nine members being to be drawn as in other cases; but in reducing the list of such names to thirteen, the place of a party opposing the petition is to be supplied by the clerk appointed to attend the committee, who, as often as it shall come to his turn, as supplying the place of the party opposing the petition, is to strike out the name, which shall then be first in the list.

The same course is to be pursued where a party waives his right of striking off.

And by the stat. 28 Geo. 3. c. 52. § 15. (a), the same method of reducing the list is to be followed whenever any party shall waive his right of striking off names from the list.

Where several petitions are to be taken into

In cases where two or more petitions are to be taken into consideration on the same day, the

(a) For this stat. see *ante*, 30.

stat. 42 Geo. 3. c. 84. § 6. (a) provides that the petitioners and other parties, and their counsel or agents, may withdraw from the house, as soon as the lists of forty-nine names shall have been drawn, in order to form the committee for the trial of such petition; and the clerk attending such committee may return the reduced list, in the interval between any two ballots; and the members remaining upon any of such reduced lists, with the two nominees, are to be sworn at the table, and may forthwith depart the house.

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Petitions of 1st class. consideration on the same day, parties on one petition may withdraw as soon as 49 names are drawn, to form the committee for that petition, and the clerk may return the reduced list in the interval between any two ballots, and the members thereupon may be sworn and depart.

With respect to petitions of the *second* class (b):

What is herein before stated applies equally as to petitions of this class, the stat. 25 Geo 3. c. 84. § 11. (c) adopting generally all the rules and regulations, authorities and powers of the recited acts of 10 Geo. 3. c. 16. (d), or the 11 Geo. 3. c. 42. (e), with respect to select committees to be appointed under those acts or either of them.

With respect to petitions of the *third* class (f):

The effect of the stat. 28 Geo. 3. c. 52. § 2 and 3 (g), is to place petitioners of this class in the

The like rules as in preceding classes as to reducing list.

(a) For this stat. see *ante*, 51.

(e) For this stat. see *ante*, 16.

(b) For this class, see *ante*, 83.

(f) For this class, see *ante*, 83.

(c) For this stat. see *ante*, 21.

(g) For this stat. see *ante*, 24.

(d) For this stat. see *ante*, 6.

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Petitions of
3d class.

situation in which sitting members would have been in opposing petitions of the first class, and by the latter section, such petitioner, or petitioners, “shall be admitted as a party or parties, and be considered as such, to all intents and purposes whatsoever.”

Under this general enactment, the particular rules mentioned as belonging to petitions of the former classes as to reducing the list, may be taken as applying also to this class.

Petitions of
4th class.

With respect to petitions of the *fourth* class (*a*):

The like rules
as in preceding
classes as to
reducing list.

By the stat. 28 Geo. 3. c. 52. § 30. (*b*), the same rules apply as in the preceding cases, the select committee being to be appointed according to the directions of the acts of 10 Geo. 3. c. 16. (*c*) and 11 Geo. 3. c. 42. (*d*); and such select committee is to be sworn *to try and determine the merits of such petition, so far as the same relate to any question or questions respecting the right of election, for the place to which the same shall relate; or respecting the right of appointing, nominating, or choosing the returning officer or officers, who are to make return of such election: and this,*

Select commit-
tee to be sworn
as herein.

(*a*) For this class, see *ante*,
84.

(*b*) For this stat. see *ante*,
37.

(*c*) For this stat. see *ante*,
6.

(*d*) For this stat. see *ante*,
16.

coupled with the general adoption, by § 32 (a) of that act, of all the pre-existing regulations, would give the same rules in reducing the list.

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Petitions in
general.

With respect to petitions in general :

It is to be observed, that a select committee, when once formed, is to be taken to be well constituted ; the legislature having particularly provided, by the stat. 53 Geo. 3. c. 71. § 18. (b), that in order to avoid and prevent all doubts respecting the appointment of any select committee, under any of the acts, by reason of any of the members not being qualified to serve, every select committee which shall be appointed under and by virtue of the acts for the trial of controverted elections, or any of them, is to be deemed to have been, and to be, legally appointed from and after the time of their being sworn at the table, in the usual manner.

Committees
once appointed
and sworn, are
to be taken
to be legally
appointed.

SECTION 12. *Of the meetings, sittings, and adjournments of select committees, as directed by the statutes.*

WITH respect to petitions in general :

The select committee having been formed in

Committee,
when formed,

(a) For this stat. see *ante*, 37.

(b) For this stat. see *ante*, 62.

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to meet at a time to be fixed by the house;

such time to be within twenty-four hours of their appointment; or unless a *Sunday*, *Christmas-day*, or *Good Friday*, intervene; and if so, within twenty-four hours, exclusive of such days.

Place of meeting to be a room adjacent to the house of commons.

Select committee to sit

the manner before stated, and the fifteen members composing it having been sworn, as before-mentioned, the house is, by the stat. 10 Geo. 3. c. 16. § 13. (a), to order such select committee to meet at a certain time to be fixed by the house, which time is to be within twenty-four hours of the appointment of such select committee, unless a *Sunday*, a *Christmas-day*, or *Good Friday*, (by the effect of the stat. 28 Geo. 3. c. 52. § 10. (b),) shall intervene. In either of which cases the meeting, sitting, or adjournment of such select committee is, by the stat. 10 Geo. 3. c. 16. § 20. (c), coupled with the last-mentioned clause of the stat. 28 Geo. 3. c. 52, to be within twenty-four hours, exclusive of such *Sunday*, *Christmas-day*, or *Good Friday*.

The place of meeting and sitting of the select committee is, by the 10 Geo. 3. c. 16. § 13, directed to be some convenient room or place adjacent to the house of commons, or court of requests, properly prepared for that purpose.

As to the sittings of select committees:

The stat. 10 Geo. 3. c. 16. § 19. (d) directs,

- | | |
|---|---|
| (a) For this stat. see <i>ante</i> ,
10. | (c) For this stat. see <i>ante</i> ,
13. |
| (b) For this stat. see <i>ante</i> ,
28. | (d) For this stat. see <i>ante</i> ,
13. |

that the select committee shall sit every day, *Sunday* and *Christmas-day* only excepted, to which exception *Good Friday* is added by the effect of the stat. 28 Geo. 3. c. 52. § 10 (a).

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every day, *Sunday*, *Christmas-day*, and *Good Friday* excepted.

And by the same two clauses respectively, the select committee is forbidden to adjourn for a longer time than twenty-four hours, unless a *Sunday*, *Christmas-day*, or *Good Friday*, shall intervene, without leave first obtained from the house upon motion, and special cause assigned for a longer adjournment.

Select committee not to adjourn for longer than twenty-four hours (unless a *Sunday*, *Christmas-day*, or *Good Friday* intervene), without leave from the house, upon motion, and special cause assigned.

And by the same clauses, in case the house shall be sitting at the time to which such select committee is adjourned, then the business of the house is to be stayed, and a motion made for a further adjournment for any time to be fixed by the house, not exceeding twenty-four hours, unless a *Sunday*, *Christmas-day*, or *Good Friday* intervene.

If the house is sitting at the time to which select committee is adjourned, the business of the house is to be stayed, and a motion made for a further adjournment, not exceeding twenty-four hours, unless *Sunday*, *Christmas-day*, or *Good Friday* intervene.

And by the stat. 10 Geo. 3. c. 16. § 20. (b), coupled with the stat. 28 Geo. 3. c. 52. § 10. (c), wherever *Sunday*, *Christmas-day*, or *Good Friday* shall so intervene, the sitting or adjourn-

Wherever *Sunday*, *Christmas-day*, or *Good Friday* so intervene, the sitting or ad-

(a) For this stat, see *ante*, 28.

(b) For this stat. see *ante*, 13.

(c) For this stat. see *ante*, 28.

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jourment of the select committee is to be within twenty-four hours from the time of appointing it, exclusive of those days.

Select committee not to sit until all the members, not absent on leave or excused, shall be met. If they shall not all meet within an hour of the time to which select committee is adjourned, a farther adjournment is to be made and reported, with the cause, to the house.

ment of the select committee is to be within twenty-four hours from the time of appointing or fixing the same, exclusive of such *Sunday, Christmas-day, or Good Friday.*

By the stat. 10 Geo. 3. c. 16. § 21. (a), the select committee is never to sit, until all the members not absent by leave, nor upon excuse to be allowed by the house, are met. And in case they shall not all meet within one hour after the time to which such select committee shall have been adjourned, a further adjournment is to be made and reported, with the cause thereof, to the house.

And it will be seen that members of the committee, otherwise absenting themselves, are to be reported to the house.

In some cases where it may be necessary to apply to the house, and the house shall happen at the time to be adjourned, a corresponding adjournment of the committee may take place.

If select committee have occasion to apply or report to the house, in relation to their adjourn-

By the stat. 11 Geo. 3. c. 42. § 5. (b), if the select committee shall have occasion to apply or report to the house, in relation to the adjournment of such select committee, the absence of

(a) For this stat. see *ante*, 13.

(b) For this stat. see *ante*, 17.

the members thereof, or the non-attendance or misbehaviour of witnesses summoned to appear, or appearing before them, and the house shall be then adjourned for more than three days, such select committee may also adjourn to the day appointed for the meeting of the house.

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ment, the absence of members, or non-attendance or misbehaviour of witnesses, and the house shall be adjourned, committee may adjourn to the day appointed for the meeting of the house.

It would be attended with great disadvantage, both to the house and to the parties concerned, that when a select committee shall have entered upon the merits of a petition, their proceedings should be rendered abortive by the prorogation of parliament.

In order to provide for which case, the stat. 28 Geo. 3. c. 52. § 33. (a) directs, that whenever it shall happen that parliament shall be prorogued, while any select committee shall be sitting for the trial of any petition, and before they shall have reported to the house their determination thereon, the committee is not to be dissolved by such prorogation, but is to be adjourned to twelve o'clock on the day immediately following that on which parliament shall again meet for the dispatch of business (*Sundays, Good Friday, and Christmas-day* always excepted); and all former proceedings of such

If parliament be prorogued whilst any select committee is sitting for the trial of a petition, and before they shall have reported their determination, committee is not to be dissolved thereby; but is to adjourn till the day following that on which parliament is to meet for dispatch of business, *Sundays, Christmas-day, and Good Friday* excepted;

(a) For this stat. see *ante*, 38.

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former proceedings to be of force; committee then to continue to sit from day to day till their determination is reported.

committee are to remain and continue to be of the same force and effect, as if parliament had not been so prorogued; and such committee is to meet on the day and hour to which it shall be so adjourned, and is thenceforward to continue to sit from day to day, in the manner provided in the acts 10, 11, and 25 Geo. 3. and that act, until they shall have reported to the house their determination on the merits of the petition.

SECTION 13. *Of the proceedings of select committees, as directed by the statutes.*

Petitions of 1st and 2d class.

WITH respect to petitions of the *first* and *second* classes (a):

Committee to try the merits of the return, or election, or both, and to determine by a majority of voices, whether the petitioners, sitting members, or either of them duly elected,

The general duty of a select committee, under the stat. 10 Geo. 3. c. 16. § 18. (b), is to try the merits of the return, or election, or both, and to determine by a majority of their voices, whether the petitioners, or the sitting members, or either of them, were duly returned or elected, or

(a) For these classes, see *ante*, 82, 83.

(b) For this stat. see *ante*, 12.

whether the election were void, which determination is to be final between the parties to all intents and purposes; and the house, on being informed thereof, by the chairman, under that statute is to order the same to be entered on their journals, and give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying such determination into consideration, as the case may require.

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Petitions of
1st and 2d
class.

or whether
election void.

Determination
to be final, &c.
and to be en-
tered on the
journals.

With respect to petitions of the *third* class (*a*):

Petitions of 3d
class.

By the stat. 25 Geo. 3. c. 84. § 10. (*b*), the select committee is to be appointed according to the directions of the stat. 10 Geo. 3. c. 16. (*c*), and 11 Geo. 3. c. 42. (*d*): which committee is to try and determine, whether any, and which of the person or persons named in the petition, ought to have been returned, or whether a new writ ought to issue; which determination is to be final, to all intents and purposes, and the house, being informed thereof by the chairman, is to order the same to be entered in their

Committee
to try whether
any, and which
person named
in petition,
ought to have
been returned,
or whether a
new writ ought
to issue,
which deter-
mination to be
final, and
the house to
give the ne-
cessary direc-
tions.

(*a*) For this class, see *ante*,
83.

(*b*) For this stat. see *ante*,
20.

(*c*) For this stat. see *ante*,
6.

(*d*) For this stat. see *ante*,
16.—This statute, it has been
seen, only adds some further
directions applicable in the
same cases, as under the 10
Geo. 3. c. 16.

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Petitions of 3d
and 4th class.

journals, and give the necessary directions for ordering a return to be made, or for altering the return, if made, or for issuing a writ for a new election, or for carrying such determination into execution, as the case may require.

With respect to petitions of the *fourth* class (*a*):

Committee
to try right of
election, or of
appointing
returning
officer or
officers;

the deter-
mination
thereupon to
be final.

App.
xiii. xv.

Under the stat. 28 Geo. 3. c. 52. § 30. (*b*), the select committee is to try and determine the merits of the petition, (as far as the same relate to any question or questions, respecting the right of election, or the right of appointing, nominating, or choosing the returning officer or officers,) according to the directions of the acts therein cited, namely, the 10 Geo. 3. c. 16. (*c*), 11 Geo. 3. c. 42. (*d*), and 25 Geo. 3. c. 84 (*e*). And the determination of such select committee, on such question or questions, is to be entered on the journals of the house, and is to be held and taken to be final and conclusive, in all subsequent elections for the place to which the same shall relate (the previous provision of the 2 Geo. 3. c. 24. § 4. as to votes being deemed to be legal, which have been so

(*a*) For this class, see *ante*,
84.

(*b*) For this stat. see *ante*,
37.

(*c*) For this stat. see *ante*, 6.

(*d*) For this stat. see *ante*,
16.

(*e*) For this stat. see *ante*,
19.

declared by the last determination in the house of commons, being repealed by § 31 (*a*) of the same act.)

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Petitions of
4th class.

By the stat. 28 Geo. 3. c. 52. § 32. (*b*), all the rules, regulations, authorities, and powers, prescribed or given by the acts 10 Geo. 3. c. 16. (*c*), 11 Geo. 3. c. 42. (*d*), 25 Geo. 3. c. 84. (*e*), or by that act, to select committees for the trial of controverted elections or returns, are to be in force with respect to committees appointed for the trial of such questions of right, in as full and ample a manner, as if the same were therein repeated, and particularly and especially enacted concerning such select committees.

All the regulations, in other cases, adopted for the trial of such petitions.

As to petitions in general:

The following provisions operate either originally or by adoption as to petitions of all classes.

The first proceeding of the select committee is to elect a chairman; the stat. 10 Geo. 3. c. 16. § 17. (*f*) directing them to make such choice on

Committee to
elect a chair-
man:

- | | |
|--|--|
| (<i>a</i>) For this stat. see <i>ante</i> ,
37. | (<i>d</i>) For this stat. see <i>ante</i> ,
16. |
| (<i>b</i>) For this stat. see <i>ante</i> ,
37. | (<i>e</i>) For this stat. see <i>ante</i> ,
20. |
| (<i>c</i>) For this stat. see <i>ante</i> ,
6. | (<i>f</i>) For this stat. see <i>ante</i> ,
12. |

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Petitions in
general.

their meeting from among such of the members thereof as shall have been chosen by lot; in which election if there be an equality of voices, the member whose name was first drawn in the house is to have a casting voice. So, likewise, if there should be occasion to elect another chairman, on the death or necessary absence of the chairman first elected.

His duty.

The chairman, so elected, presides in all meetings of the select committee, and all reports, which are to be made to the house, in respect of the matters before them, are made by him.

Chairman to
have a casting
voice.

And by the stat. 10 Geo. 3. c. 16. § 27. (a), in all questions arising in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition, as well as all other resolutions, wherein the voices shall be equal, the chairman is to have a casting voice.

Committee to
be attended by
a short-hand
writer:

It is usual under the authority of the stat. 42 Geo. 3. c. 84. § 8. (b) that the select committee should be attended by a short-hand writer, that statute enacting that every such committee may be attended by a person skilled in the art of

(a) For this stat. see *ante*, 15.

(b) For this stat. see *ante*, 51.

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writing short-hand, who shall be especially appointed by the clerk of the house of commons for the time being, and sworn by the chairman *faithfully and truly to take down in short-hand the evidence adduced before the committee, and from day to day, as occasion may require, to transcribe, or to cause the same to be transcribed, in words at length, for the use of the committee.*

Petitions in general.
who is to be sworn.

His oath.

Such short-hand writer is therefore sworn accordingly, before the select committee proceed to business.

The next duty of the select committee is to ascertain whether or not the merits of the petition before them turn in any degree upon any question respecting the right of election, or of appointing the returning officer or officers for the place to which the petition relates. In either of which cases, by the stat. 28 Geo. 3. c. 52. § 25. (a), if the committee shall be of opinion that such merits wholly or in part depend upon any such question, they are to require of the counsel or agents for the several parties, or if there be none such before them, the parties themselves, to deliver to the clerk of the committee, statements in writing of the right in question for which they respectively contend.

If committee of opinion that merits of petition turn upon any question respecting right of election or of appointing a returning officer or officers, they are to require from the parties statements in writing of the rights for which they contend respectively.

These preliminary arrangements being made,

(a) For this stat. see *ante*, 35.

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general.

When commit-
tee deliberate,
room to be
cleared.

the select committee proceeds upon the trial of the case before them, in the course of which many practical questions may arise, the consideration of which will belong to another chapter.

It may be proper here to mention, that by the stat. 10 Geo. 3. c. 16. § 27. (a), whenever the select committee shall think it necessary to deliberate amongst themselves, upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition; as soon as the select committee shall have heard the evidence and counsel on both sides relative thereunto, the room or place wherein they shall sit is to be cleared, if they shall think proper, while the members of such select committee consider thereof.

Questions and
resolutions to
be decided by a
majority of
voices.

And by the same clause, in such questions and resolutions, as well as in all other resolutions of the select committee, the decision is to be by a majority of voices.

SECTION 14. *Of the statutory provisions with respect to witnesses attending before select committees.*

WITH respect to petitions in general:

There are several statutory provisions with re-

(a) For this stat. see *ante*, 15.

spect to the attendance of witnesses before select committees, which by adoption apply in the cases of petitions of all classes.

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Petitions in general.

By the stat. 10 Geo. 3. c. 16. § 18. (a), authority is given to a select committee to send for persons, papers, and records; and to examine all the witnesses who shall come before them upon oath.

Committee may send for persons, papers, and records, and may examine witnesses on oath.

Obedience to such summons is enforced by the stat. 10 Geo. 3. c. 16. § 26. (b), whereby if any person summoned by the select committee shall disobey such summons, the chairman of such committee, by their direction, may at any time during the proceedings report the same to the house for the interposition of their authority or censure.

In cases of persons disobeying summons, chairman of committee by their direction may report them to the house, for the interposition of their authority or censure.

And such obedience is still further enforced by the stat. 28 Geo. 3. c. 52. § 16. by which if any person summoned to attend a select committee, by the warrant of the speaker, or by order of the committee, shall disobey such summons, the committee have power by warrant to be signed by their chairman, and directed to the

Committee may also commit such persons by the warrant of their chairman to the custody of the serjeant at arms, or his deputy or deputies, for any time not exceeding 24 hours, if the house be sit-

(a) For this stat. see *ante*, inspection of papers, &c. *App.* 12. dxviii.

For the form of the speaker's warrant or summons to a witness to attend before a select committee, see *App.* dxvii. The speaker's warrant for

The speaker's warrant for production of private books or papers, &c. *App.* dxix.

(b) For this stat. see *ante*,

30.

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Petitions in general.

ting, or if not, for a time not exceeding 24 hours after the hour to which the house is adjourned.

serjeant at arms, or his deputy or deputies, to commit such person (not being a peer of the realm or lord of parliament) to the custody of such serjeant, without bail or mainprize, for any time not exceeding twenty-four hours, if the house shall then be sitting, or if not, then for a time not exceeding twenty-four hours, after the hour to which the house shall be adjourned.

Witnesses to be sworn by the clerk attending the committee,

By the stat. 10 Geo. 3. c. 16. § 29. (a), the oaths directed by that act to be taken before the select committee are to be administered by the clerk attending such select committee.

Persons guilty of perjury before committees to be liable to the pains and penalties of perjury.

And by the same clause, all persons who shall be guilty of wilful and corrupt perjury, in any evidence which they shall give before the house, or the select committee, in consequence of the oath which shall be taken by the direction of that act, are on conviction thereof to incur and suffer the like pains and penalties to which any other person convicted of wilful and corrupt perjury is liable by the laws and statutes of this realm.

Witnesses prevaricating may be dealt with as those refusing to attend.

If any witness, when before the select committee, shall prevaricate, or otherwise misbehave in giving or refusing to give evidence, he may be dealt with, under the statutes 10 Geo. 3. c. 16,

(a) For this stat. see *ante*, 15.

or 28 Geo. 3. c. 52. § 16. respectively, as before mentioned in the cases of witnesses refusing to attend.

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Petitions in general.

Ante. 307.

The questions which have arisen with respect to evidence in cases before select committees will form the subject of subsequent inquiry.

SECTION 15. *Of the attendance of members put upon a select committee, and herein of the consequences of their absence.*

WITH respect to petitions in general:

The following provisions apply originally, or by adoption, with respect to petitions of all classes:

By the stat. 10 Geo. 3. c. 16. § 21. (a), no member of a select committee is to be allowed to absent himself from the same without leave obtained from the house, or an excuse to be allowed by the house at its next sitting, on special cause shewn and verified upon oath.

No member is to absent himself from select committee without leave of the house, or without excuse to be allowed by the house at its next sitting.

And by § 22 (b) of the same act, the chairman of the select committee is, at the next meeting

(a) For this stat. see ante, 13.

(b) For this stat. see ante, 14.

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Petitions in
general.

Chairman of
committee to
report names of
members who
have been ab-
sent, who are
to be directed
to attend the
house at its
next sitting,
and to be or-
dered into cus-
tody, and
otherwise
punished or
censured by the
house; unless
it shall appear
on oath that
such member
was prevented
by sudden ac-
cident or neces-
sity.

If more than
two members
absent, com-
mittee to ad-
journ.

of the house, to report to them the name of every member thereof who shall have been absent therefrom without such leave or excuse (*a*); and such member is to be directed to attend the house at its next sitting, and is to be ordered to be taken into custody of the serjeant at arms, for such neglect of his duty, and otherwise punished or censured at the discretion of the house; unless it shall appear to the house, by facts specially stated and verified upon oath, that such member was by a sudden accident, or by necessity, prevented from attending such select committee.

The necessity of thus enforcing the attendance of members is imperious, inasmuch as the non-attendance of a very small proportion of them will altogether interrupt the proceedings, it being enacted, § 23 (*b*) of the same act, that if more than two members of the select committee are on any account absent therefrom, such committee is to adjourn, and so from time to time until thirteen members are assembled.

(*a*) For reports to the house of the absence of a member, see Journ. 12th Feb. 1813; and as to the illness of members serving upon committees, *Haslemere*, 19th Feb. 1813. 68 Journ. 182. *Wey-*

mouth and *Melcombe Regis*, 22d Feb. 1813. 68 Journ. 194. *Cardigan*, 23d March, 1813. 68 Journ. 340.

(*b*) For this stat. see *ante*, 14.

The stat. 10 Geo. 3. c. 16. § 24. (a) had provided, that in case the number of members able to attend the select committee should by death or otherwise be reduced to less than thirteen, and should so continue for the space of three sitting days, such committee was to be dissolved, and another chosen to try the matter of the petition; and the proceedings of the former select committee were to be void and of no effect (b).

This provision however is qualified by the subsequent statute 28 Geo. 3. c. 52. § 17. (c), by which this strictness is somewhat relaxed, after the early meetings of the select committee.

The latter act provides, that when they shall have sat for business fourteen days, exclusive of

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Petitions in general.

Committee formerly dissolved if reduced to less than 13.

When a committee shall have sat for business 14

(a) For this stat. see *ante*, 14.

(b) This latter provision was dispensed with in the instance of the *Bedfordshire* committee, 1775, where the select committee having made considerable progress, was reduced to thirteen, and where, if it had been dissolved, it would have produced great inconvenience and injury to the parties; in order to provide for the possibility of which the legislature interposed by the stat.

25 Geo. 3. c. 17, whereby, in the event of the committee being, by the indisposition or death of any of its members, further reduced to eleven, the house was empowered, upon application to them for that purpose, to authorize and direct the committee to proceed in the matters referred to them, and to report upon the same, and their report was to be as valid as if the committee had not been so reduced.

(c) For this stat. see *ante*, 31.

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days, exclusive of the days on which they shall have adjourned on account of the absence of any member, and of *Sunday, Christmas-day, or Good Friday*, if not less than 12 present, committee not to be dissolved by reason of the absence of members, unless it be reduced below 12 for three successive days.

And if the committee shall have sat for business for 25 days, they may proceed if not reduced below 11 for three successive days.

No determination to be made nor question proposed unless 13 members present. No member to vote on such determination or other question or resolu-

those days, on which they shall have adjourned on account of the absence of any member, and of *Sunday, Christmas-day, or Good Friday*, they may proceed to business, if not less than twelve be present.—And that in such case the committee is not to be dissolved by reason of the absence of the members, unless the number of members able to attend the same shall, by death or otherwise, be unavoidably reduced to less than twelve, and shall so continue for the space of three sitting days.

And by the same clause, if the committee shall have sat for business twenty-five days, they may proceed to business, if not less than eleven members be present:—and in such case the committee is not to be dissolved by reason of the absence of the members, unless the number of members able to attend shall be reduced, as in the former case, to less than eleven, and so continue for three sitting days.

It had also been provided, by the stat. 10 Geo. 3. c. 16. § 28. (a), that no determination of a select committee should be made, nor any question proposed, unless thirteen members should be present; and that no member should have a

(a) For this stat. see *ante*, 15.

vote on such determination, or any other question or resolution, who should not have attended during every sitting of such select committee. But this is in effect modified by the above clause of 28 Geo. 3. c. 52. § 17.

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Petitions in general.

tion who should not have attended every sitting.

Ante, 311.

SECTION 16. *Of the reports of select committees to the house; of their report, that a petition is frivolous or vexatious, of the consequences as to costs, and of the recovery thereof.*

SELECT committees in the course of their proceedings have occasionally to report to the house, as has been seen, with regard to the attendance of members, the conduct of witnesses, or upon various other grounds. And when the trial of the petition is finished, it becomes their duty to report the result, in the shape of their determination, by their chairman to the house.

With respect to petitions of the *first, second,* and *third* classes (a):

Petitions of 1st, 2d, and 3d class.

This report is either general, as that the person whose election is in question is or is not duly returned or elected, or that the election is

(a) For these classes, see *ante*, 82, 83.

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Petitions of
1st, 2d, and 3d
class.

In what cases
select commit-
tees to report
specially.

or is not void, under the stat. 10 Geo. 3. c. 16. § 18. (a), (and that of 25 Geo. 3. c. 84. § 11. (b), by adoption).—Or, it contains special matters, under the stat. 10 Geo. 3. c. 16. § 25. (c), whereby, if the select committee shall come to any resolution other than a determination mentioned in that act (that is, such as have been just stated), they are, if they think proper, to report the same to the house, for their opinion, at the same time that the chairman of such committee shall inform the house of such determination; and the house may confirm, or disagree with, such resolution; and make such orders thereon as to them shall seem proper.

The subject matter of such special reports depends upon various grounds, and is to be collected under the different heads, with which such matter is connected. In the following case a special report is particularly directed.

Where select
committee of
opinion that
the merits of a
petition depend
upon any ques-
tion or ques-

It has been seen that whenever a select committee shall be of opinion that the merits of a petition wholly or in part depend on any question or questions which shall be before them re-

(a) For this stat. see *ante*,
12.

(c) For this stat. see *ante*,
14.

(b) For this stat. see *ante*,
21.

specting a right of election, or of appointing returning officer or officers, they are to require statements from the parties as to the rights for which they contend.—In such cases, by the stat. 28 Geo. 3. c. 52. § 25. (a), they are to come to distinct resolutions on such statements, and are, at the same time that they report their final determination on the merits of the petition, to report to the house such statement or statements, together with their judgment with respect thereto:—Which report is thereupon to be entered in the journals, and notice thereof is to be promulgated by the speaker, and gazetted according to the directions of that clause, together with the 53 Geo. 3. c. 71. § 17 (b).

With respect to petitions of the *fourth* class (c):

The report is necessarily of a special nature, the stat. 28 Geo. 3. c. 52. § 30. (d), directing that the committee shall try and determine the merits of the petition, so far as the same shall relate to any question respecting the right of election, for the place to which the petition shall relate, or respecting the right of appointing,

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Petitions of 1st, 2d, and 3d class.

tions respecting right of election, or of appointing returning officer or officers, they being in such cases to require statements of the parties as to the rights for which they contend, and to come to distinct resolutions thereupon, and to report their final determination with their judgment with respect thereto.

Such report to be entered in the journals.

Report is necessarily special.

(a) For this stat. see *ante*, 35.

(b) For this stat. see *ante*, 62.

(c) For this class, see *ante*, 84.

(d) For this stat. see *ante*, 37.

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Petitions of
4th class.

nominating, or choosing the returning officer or officers, who are to make return of such election.

As to the report of a select committee that a petition is frivolous or vexatious, and the consequences as to costs :

Petitions in
general.

With respect to petitions in general :

It will not be necessary, in the remainder of the section, to discriminate between petitions of the different classes. The first provisions which will be mentioned depend upon the stat. 28 Geo. 3. c. 52. § 18. (a), and these apply in the cases of petitions of the *first*, *second*, and *third* classes (b). The same provisions were afterwards imparted, by the adoption of the same statute, § 32 (c), to the cases of petitions of the *fourth* and *fifth* classes (d).

What is about to be stated is to be taken therefore as applying to petitions of all classes.

With a view to prevent the parties in election petitions from contending in support of cases

(a) For this stat. see *ante*,
32.

(b) For these classes, see
ante, 82, 83.

(c) For the clause, see *ante*,
37.

(d) For these classes, see
ante, 84.

affording no reasonable prospect of success on the one side, or from maintaining an opposition upon grounds obviously untenable upon the other, and thus harassing the opposite party with unnecessary trouble and expense, the law has made some very salutary provisions, the foundation of which seems to have been laid in the resolutions of the house above a century back (*a*).

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Petitions in
general.

With respect to petitioners:

The stat. 28 Geo. 3. c. 52. § 18. (*b*) directs, that the select committee, at the time that they report to the house their final determination on the merits of the petition, shall also report to the house whether such petition did or did not appear to them to be frivolous or vexatious.

Select committee, when they report their determination on the merits of a petition, are also to report whether the petition appeared to them frivolous or vexatious.

By the stat. 28 Geo. 3. c. 52. § 19. (*c*), whenever any select committee shall report to the house, with respect to any petition, that the same appeared to them to be frivolous or vexa-

Wherever select committee report that petition appeared to them frivolous or

(*a*) See the resolutions of the 31st October, 1705, 10th November, 1707, and 22d November, 1708, viz. "That where the house shall judge any petition touching elections to be frivolous and vexatious, the house will order satisfaction to be made to the person petitioned against." 15 Journ. 6. *Ibid.* 395. 16 Journ. 6.
(*b*) For this stat. see *ante*, 32.
(*c*) For this stat. see *ante*, 32.

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general.

vexatious, the
parties op-
posing peti-
tion to be en-
titled to costs.

tious, the party or parties, if any, who shall have appeared before the committee, in opposition to such petition, are to be entitled to recover from the person or persons, or any of them, who shall have signed such petition, the full costs and expenses which such party or parties shall have incurred in opposing the same.

The above provisions apply to petitioners only ; there are, however, corresponding provisions which go to fix other parties with costs, which will presently be shewn.

It is now necessary to examine the cases in which the application of these provisions has been agitated, and to observe the grounds which have or have not led to a determination and report, that a petition was frivolous or vexatious.

The general nature of the cases in which committees have resolved petitions to be frivolous and vexatious, has been, either ; where it did not appear that the petitioner ever had any evidence wherewith to support his petition, but, after awaiting the result of another petition in the same case upon that being withdrawn, he also withdrew ; or, where the case put forward by the petitioner was perfectly untenable in

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general.

point of law, although he acted under the advice of counsel in petitioning, and withdrew without offering evidence, on discovering that the law was against him; or, where there have been heavy charges against the returning officers, and no evidence was offered in support of them; or, where the only charge in the petition, in support of which any evidence was offered, regarded the right of election, and the right so insisted upon was in opposition to a determination of the house of commons; or, where a petition contained charges of bribery and treating against the sitting members, and of misconduct against the returning officers (although the sitting members did not press for costs); or where no evidence was offered in support of the petition, although it appeared that two witnesses, one of whom was shewn to be material (*a*), had died since the petition was presented, and although notice was given to the sitting member that the petitioner would not oppose his right to the seat; or, where no evidence was offered in support of the petition; and this even under circumstances which made it impossible but that the sitting member must have been aware

(*a*) But see the case of *Honiton*, *post*; where five of the most material of the petitioner's witnesses died, and where the petition was not so voted. See also the case of *Evesham*, 1803, *post*.

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general.

of the petitioner's intention not to offer evidence.

The case of the county of *Sutherland*, in which one petition was resolved to be frivolous and vexatious, and in which another petition was resolved not to be so, will be stated in its proper place (a).

2 Fras. 236.

Where the petition was preferred under advice of counsel, upon the notion that an election holden by a returning officer *de facto*, but not *de jure*, would be void; but no evidence was offered in consequence of its being discovered that the law was otherwise, it was holden frivolous and vexatious.

Bodmin, 1792.—The petition complained of the election and return as having been holden and made by a person who was not the lawful mayor, but who had usurped the office; and as being therefore void. The petitioner's counsel stated that by the charters which regulate the corporation of the borough, the presence of the mayor was necessary in the election of a successor to his office; but the person who was chosen mayor in 1787 not attending at the day of election in 1788, the corporation was unable to proceed, and was destitute of that officer at the close of the year: an application on that account was made to the court of King's Bench, and a *mandamus* obtained for electing a mayor; but as all the persons required by law did not even then assemble, the office remained vacant till the 3d of June 1790, on which day seventeen persons out of thirty-seven assembled; several of these protested against the proceedings of the meeting,

(a) See *post*, sect. 17.

but the rest elected Mr. *Hext* mayor, under a radical defect. A process of *quo warranto* was instituted against him, and was then at issue: but as he filled the office of mayor *de facto*, though not *de jure*, he (the petitioner's counsel) then understood it to be the law of parliament (though he had formerly given an opinion the other way), that *Hext* might act as returning officer, and should therefore declare on the part of his clients, that although they might possibly litigate the point with some chance of success, they did not intend to bring forward evidence to substantiate the allegations of the petitions, finding that they were mistaken in point of law. Hereupon the counsel for the sitting members moved the committee that the petitions might be reported frivolous and vexatious. But the counsel for the petitioners stated that their clients had acted upon the advice of counsel, and that they desisted the moment they were convinced of their error. The committee reported the petitions frivolous and vexatious.

Tewkesbury, 12th October, and 20th February, 1797.—The petition of Mr. *Moore* and Mr. *Francis* contained a heavy charge against the returning officers (the bailiffs), which the petitioners abandoned on the first day of the trial. This the committee determined to be frivo-

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Petitions in general.

1 Peck. 146.

Where the petition contained a heavy charge against the returning officers, which was abandoned on the first day of trial, the petition was holden so far frivolous and vexatious.

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general.

lous and vexatious, as far as regarded such charge.

1 Peck. 307.
334.

Where the petition contained many allegations, in respect of none of which evidence was offered, except as to one which bore upon the right of election, and in respect of which there had been a determination of the house of commons, contrary to the right insisted upon by the petitioner, the petition was holden frivolous and vexatious.

East Grinstead, 1803.—Mr. *Frost*, in his petition, alleged, 1. That the right of election in *East Grinstead* is in the inhabitants paying scot and lot, as well as in the freeholders of the borough: 2. That a majority of legal voters polled for the petitioner: 3. That the returning officer admitted several illegal, split, and occasional votes in favor of the sitting members, and rejected many legal votes tendered in favor of the petitioners: and, 4. That the sitting members had procured their return by many undue, illegal, and unwarrantable practices.

The petition of the electors contained allegations nearly similar.

At the trial of the cause, the petitioners abandoned the allegations of the right of election being in the inhabitants, and of corruption in the sitting members, and but slightly insisted on the misconduct of the returning officer, in not requiring that the voters should produce their deeds: and they confined themselves, with this one exception, solely to the objection of occasionality, which they attempted to apply to all the burgage tenants who had voted for the sitting members.

One burgage tenant only had voted for the petitioner.

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general.

When the evidence was closed on the part of the petitioner, the counsel for the sitting members, after commenting thereupon, concluded by expressing a hope that the petitions would be voted to be frivolous and vexatious; urging the following as the grounds of such application: *first*, because of the many allegations contained therein, so few had been attempted to be supported by any sort of evidence; *secondly*, because the claim of the right of election in the inhabitants was in direct hostility to a clear and well-known determination by the house of commons to the contrary (which they shewed from the journals); *thirdly*, because the charge against the returning officer was equally groundless, and contradicted by the acknowledgment of the petitioner himself at the election; *fourthly*, because the characters of the sitting members had been attacked, with as little foundation, by accusations of corrupt, illegal, and unwarrantable practices: that it had been attempted to publish these calumnies under the form of a petition to the house of commons. That in the two last particulars, therefore, the petitions might most properly be called vexatious, and in all respects frivolous; for that the only point relied upon had been decided other-

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general.

wise so many times, and the law upon the subject had been so firmly settled, that this attempt could only have proceeded from a desire to harass and disturb persons in the enjoyment of their lawful rights, and not from any reasonable hope of succeeding in an attempt either to seat the petitioner, or to avoid the election. The committee, after holding that the sitting members were duly elected, decided that the petitions were frivolous and vexatious.

1 Peck. 469.
Where a petition contained charges of bribery, treating, and undue practices, against the sitting members, and of misconduct in the returning officer; but the petitioner offered no evidence in support of them, and gave no reason for so doing; the petition was resolved to be frivolous and vexatious, though the counsel for the sitting members renounced any claim to such resolution.

And in the case of *Bishop's-Castle*, 1803.—The petition of Mr. *Kinchant* contained charges of bribery, treating, and undue practices against the sitting members, and of misconduct in the returning officer, and a claim of the majority of legal votes in favour of the petitioner.—At the first sitting of the committee, the counsel for the petitioner informed them, that he should call no witnesses in support of the petition; and the counsel for the sitting members expressed themselves well satisfied with his conduct in forbearing to give them further trouble, and renounced any right they might have to desire that the petition might be voted frivolous and vexatious. It is not stated, in the report of this case, that any previous notice had been given by the petitioner of his intention to abandon his petition.

No reason was assigned for not producing any evidence.—The committee (after resolving that the sitting members were duly elected) further resolved, that the petition was frivolous and vexatious (a).

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Midhurst, 1804.—The petitioner, Mr. *Holt White*, stated in his petition, that Mr. *Turnor*, the sitting member, was not duly qualified to sit in parliament; and that he had been guilty of bribery and treating; and that the petitioner had the legal majority of votes, and should have been returned; and he also complained of the misconduct and partiality of the returning officer, but he declined producing evidence before the committee in support of these allegations.—The committee was appointed 4th February, 1804, and the only question was, whether or not the petition should be voted frivolous and vexatious.—The petitioner, in order to induce the committee not to come to such a resolution, proved the death of a person who was stated to be a material witness, in March, 1803; and, further, that the sitting member had been apprized by a notice on the 25th January, 1804, that it was the intention of the petitioner not to oppose his right to the seat.—It was also alleged, that an-

2 Peck. 146.

Where no evidence was given in support of the petition, it was holden frivolous and vexatious, although it appeared that two witnesses, one of whom was proved to be material, had died since the petition was presented, although notice was given to the sitting member, that the petitioner would not oppose his right to the seat.

(a) But see the case of 1803, *Evesham*, 1803, and *In-Shaftesbury*, 1803, *Penryn*, *verness*, 1803, *post*, 329. 344.

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general.

other witness had died, by whose death the petitioner had been prevented from proving some particular transactions at the time of the election. It was not stated what those transactions were.—The committee, after deciding that the sitting member was duly elected, determined the petition to be frivolous and vexatious.

2 Peck. 257.
Where no
evidence was
offered in sup-
port of the
petition, it was
resolved to be
frivolous and
vexatious.

Hereford, 7th Dec. 1802, 28th Nov. 1803, and 28th Feb. 1804. The petitioners produced no evidence in support of their petition. Mr. *Scudamore*, and Mr. *Symonds*, the sitting members, were declared to be duly elected, and at the instance of their counsel, the petition was resolved to be frivolous and vexatious.

2 Peck. 255.
Same point.

Malden, 1804. The petitioners brought forward no evidence in support of their petition.—The sitting members, Mr. *Strutt* and Mr. *Western*, were reported to be duly elected. The petition was determined to be frivolous and vexatious (a).

And, in the following case, although the sitting members were fully apprized of the inten-

(a) *Coventry*, 1804. A petition was presented by certain electors against the election of Mr. *Moore*. No evidence being brought to support the allegations thereof, Mr. *Moore* was reported to be duly elected. 2 Peck. 273. But the report does not state any other resolution.

tion of the petitioners to offer no evidence, the committee came to the same determination.

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Ilchester, 29th March, 1804.—A motion had been negatived, for discharging the order for taking the petition into consideration, and a committee had been appointed on the 20th of April. The counsel for the sitting member admitted that a notice had been given to him of the petitioner's intention not to give any evidence in support of his petition; and (no evidence being offered accordingly) he left it to the committee to decide as they should think proper upon the question of costs.—The petition was voted frivolous and vexatious.

2 Peck. 274.

Where a motion for postponing the petition had been made and negatived, and where notice had been given to the sitting member that no evidence would be offered in support of the petition, it was, nevertheless, voted frivolous and vexatious.

On the other hand, the cases in which petitions have been resolved not to be frivolous or vexatious, have been, either where several of the most material witnesses died after the petition was presented, and before the hearing, and timely notice was given to the sitting member to prevent his incurring any expense in preparing for his defence; or, where no evidence was offered in support of the petition, and previous notice was given to the sitting members, (there being however in this latter class some contrariety of decisions); or, where the election took place pending a petition of appeal, wherefore the right of election was uncertain.

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2 Fras. 247.

Where five of the most material of the petitioner's witnesses died between the time of presenting the petition and the hearing, and of whose death the petitioner was ignorant, when the petition was renewed, (it being a renewed petition) notice was given to the sitting member of the intention not to offer evidence; the petition was holden not frivolous or vexatious.

Honiton, 1792.—The counsel for the petitioner stated, that the evidence which his client had to produce had been laid before him, and he had thought the case a very proper one to be brought before a committee, as there was only a majority of four;—but that an act of God, which could neither be foreseen nor prevented, had deprived his client of five of the most material witnesses, and had thus, without his fault, taken from him the means of substantiating his claim. He added, that as the fact would not be controverted, and timely notice had been given to the sitting member, in order to prevent the expenses of preparing his defence, he trusted the committee would be of opinion that his client had not acted in a manner either frivolous or vexatious. The counsel for the sitting member, after acknowledging the death of the five witnesses, said he was not instructed to press the committee to report in such a way as to entitle his client to costs. After the committee had inquired from the solicitor for the petitioner, whether he, or the petitioner, knew of the death of these five witnesses when the petition was renewed (it being a renewed petition), and the answer being in the negative, the committee determined that the petition did not appear to them frivolous or vexatious.

So, where the petitioners declined to produce

any evidence before the committee, and gave timely notice to the sitting members or their agent of such their intention, the committees, in the following cases, reported that the petitions were not frivolous or vexatious.

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Shaftesbury, 1803.—The petitioners declined to produce any evidence in support of their petition. It appeared that they had given previous notice to the sitting members of such their intention.—The committee reported that the petitions were not frivolous or vexatious.

1 Peck. 18.
Where petitioner declined to offer any evidence, and had given previous notice, the petition was holden not to be frivolous or vexatious.

Penryn, 1803, was to the same effect.

1 Peck. 251.
Same point.

Evesham, 1803. The petitioner, Mr. *Howorth*, having given notice to the sitting members, that he did not mean to offer any evidence in support of his petition;—when the committee met, they were addressed by his counsel, stating the notice that had been given, that the sitting members were satisfied with the conduct of his client; and had agreed to give up any right they might have to call upon the committee to resolve that the petition was frivolous and vexatious.—The counsel, on the other side, did not ask for any such resolution.—The committee determined the sitting members to be duly elected;

1 Peck. 471.
Same point.

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general.

2 Peck 334.

Where an election took place pending a petition of appeal, and the election was petitioned against; the petition of appeal being decided only four days before the other petition came on to be heard, and that decision being against the right contended for by the petitioners in the latter petition, they offered no evidence, but had given no previous notice to that effect: their petition was not holden frivolous or vexatious.

and that the petition was not frivolous or vexatious (a).

4th. *Liskeard*, 1804.—Mr. *Sheridan* petitioned, stating that the majority of legal votes tendered themselves in his favor, the greater part of whom the mayor rejected, and returned Mr. *Huskisson*, by which means a double return had been made, when the petitioner alone should have been returned. There was also a petition of certain inhabitants, stating (in substance) a former election (6th July, 1802) which had been petitioned against, and the decision of the committee upon the merits, and also upon the right of election; and further alleging, that there was a petition of appeal as to the right of election; that the latter stood for consideration on the 17th April; that (in the interval before its trial, *viz.*) on the 9th March, the election then in question took place upon a vacancy; that the petitioners and others claiming a right to vote at the election as inhabitants paying or liable to pay scot and lot, tendered their votes for Mr. *Sheridan*, and that he ought to have been returned, and therefore praying, that “in case the petition of right, now pending before the house,

(a) See also the case of the case of *Bishop's Castle*, *Inverness*, *post*, 344. But see *ante*, 324.

should be decided in favor of the petitioners, and those claiming to vote as inhabitants of the said borough of *L.*, paying or liable to pay scot and lot, the election of Mr. *Huskisson* (who had been returned by the mayor and burgesses) might be declared null and void; and that Mr. *Sheridan* might be declared to have been duly elected, and that the return might be amended accordingly."

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Both these petitions were ordered for consideration on the 23d April, 1804; but having been deferred, they did not come on till the 15th May.

On the 11th May, the committee of appeal made their report, declaring the right of election to be in the mayor and burgesses. 2 Peck. 316.

The petitioners upon these petitions declining to produce any evidence in support of their petitions, the petitioners' counsel thereupon applied to the committee that they might be voted frivolous and vexatious, or at least vexatious.—

After the counsel had been heard (*a*) on both

(*a*) On the behalf of the petitioners, it was argued that when the petitions were presented, the question was the same as that before the select committee in 1803; that the petitions at that time, so far from being frivolous or vexatious, had occupied the attention of the committee for

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sides, the committee (after resolving that Mr. *Huskisson* was duly elected) determined that the petitions were not frivolous or vexatious.

With respect to parties opposing petitions:

Select commit-
tees to report
whether oppo-
sition to pe-
tition frivolous
or vexatious.

The above clause of the stat. 28 Geo. 3. c. 52. § 18. (a) directs that the select committee shall report with respect to every party or parties who shall have appeared before them in opposition to the petition, whether the opposition of such party or parties respectively did

many days; that not even an attempt was made to induce the committee to vote them frivolous or vexatious; that if those were not so, the present could not be. The circumstance of the petition of appeal having been pending at the time of the election was adverted to, and that the petitioners, till that was decided, were confident of success. It was urged that the petitioners not having given notice of not intending to offer evidence in support of the petition, had not occasioned any great expense to the other side. Moreover, it was observed, that if the committee should consider the conduct of the petitioners to have been in any degree vexatious, the act 28 Geo. 3. c. 52. § 18 and 19. would not warrant them in pronouncing

the petitions to be so; that the words of the statute are not the "conduct of the parties," but only the "petition," and the words of a penal law cannot be strained to a subject not obviously within them.—It was admitted, on the other side, that at the time the petitions were presented, there was *probabilis causa litigandi*, inasmuch as the former decision on the right of election might have been reversed on the appeal then pending. But it was insisted, that as soon as that appeal was decided, they ought to have given notice to Mr. *Huskisson* that they should give no evidence before the committee, that the petitions were not frivolous or vexatious.

(a) For this stat. see *ante*, 32.

or did not appear to them to be frivolous or vexatious.

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And by § 20 (a) of the same act, whenever any such committee shall report to the house, that such opposition appeared to them to be frivolous or vexatious, the person or persons having signed the petition are to be intitled to recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expenses which such petitioner or petitioners shall respectively have incurred in prosecuting their petition.

Wherever committee report that the opposition to a petition is frivolous or vexatious, petitioners to be intitled to costs.

As to cases where no party opposes the petition :

It seems, that where no party appears before the committee in opposition to the petition, the committee cannot resolve that the opposition is frivolous and vexatious. As in the 3d *Middlesex* case, 1806, Mr. *G. B. Mainwaring* and certain electors petitioned against the election of Sir *F. Burdett*, and stated that Mr. *M.* was entitled to the seat. Before the petition was to be taken into consideration, Sir *Francis Burdett* sent a written declaration to the speaker, that he did not mean to defend his election : whereupon, certain elec-

2 Peck. 387. 389.

It seems, that where no party appears in opposition to a petition, the select committee cannot declare that the opposition is frivolous or vexatious.

(a) For this stat. see *ante*, 32.

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tors petitioned the house to be admitted parties, in the room of Sir *F. Burdett*, which was ordered accordingly.—The petition was not heard in that session.—In the following session, Mr. *Mainwaring* renewed his petition, but the electors did not, nor did they enter into any recognizances.—The committee (after resolving Mr. *Mainwaring* to be duly elected) resolved the petition not to be frivolous or vexatious; and that the election was not vexatious or corrupt. The counsel for the petitioners suggested, that the committee could not declare the defence to be frivolous or vexatious in this case, since no party appeared in opposition to the petition; and that the stat. 28 Geo. 3. c. 52. § 20. (a) refers only to the opposition made to the petitioners by any party, “who shall have appeared before the committee.”

Where no party appears in opposition to petition, select committee are to declare whether the election or return, or the omission of a return, or the insufficiency of the return complained of, appeared to them vexatious or corrupt.

By the same statute 28 Geo. 3. c. 52. § 18. (b), if no party shall have appeared in opposition to the petition, the select committee are to report whether the election or return, or the alleged omission of a return, or the alleged insufficiency of a return complained of in the petition, did or did not appear to them to be vexatious or corrupt.

(a) For this stat. see *ante*, 32.

(b) For this stat. see *ib.*

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general.See *ante*, 95.

It will be recollected, that if a person should have been returned under circumstances which would make it impossible for him to uphold such election or return, the law has given him the means of withdrawing his pretensions; and in such case it becomes his duty so to do, by giving regular notice, under the 28 Geo. 3. c. 52. § 1. (a), of his intention not to defend his seat.

And by § 21 (b) of the same act, whenever in any case where no party shall have appeared before the committee in opposition to the petition, the committee shall report to the house, with respect to the election or return, or to the alleged omission of a return, or to the alleged insufficiency of a return complained of in the petition, that the same appeared to them to be vexatious or corrupt, the person or persons who shall have signed the petition are to be entitled to recover from the sitting member, or members (if any), whose election or return shall be complained of in such petition (such sitting member or members not having given notice, as therein aforesaid, of his or their intention not to defend the same), or from any other person or persons whom the house shall have admitted, or directed to be made a party or parties to oppose such petition, the full costs and

Wherever in cases where no party shall have appeared in opposition to petition, the committee shall report that the election or return, or the insufficiency of the return complained of, that it appeared to them vexatious or corrupt, petitioners to recover costs from sitting member or members, or from parties admitted by the house to oppose petition.

(a) For this stat. see *ante*,
24.

(b) For this stat. see *ante*,
33.

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general.

1 Peck. 526.
Where the sitting member was a minor at the time of the election, and due notice was given thereof at the nomination and election; but the sheriff (who was related to the sitting member), though his disqualification was pointed out to him, declared he would return him, and did so, and where the sitting member duly declared his intention of not defending the return, the election and return was held to be vexatious, but not corrupt.

expenses which such petitioner or petitioners shall have incurred in prosecuting such petition.

In the case of *Flintshire*, 1797.—Mr. *Lloyd* petitioned against the return of Sir *Thomas Mostyn*, claiming that he had the greatest number of votes of those candidates who were legally qualified to sit. Certain electors also petitioned, alleging that Sir *T. M.* was a minor; that the same was repeatedly stated to the sheriff (who was brother-in-law to Sir *T. M.*) and to the freeholders; and that it being pointed out to the sheriff that he could not legally receive Sir *T. M.* as a candidate, or return him to parliament, he declared he should return him, and accordingly did so. Previously to the appointment of the committee, Sir *T. M.* had notified to the speaker his intention not to defend his return, pursuant to the 28 Geo. 3. c. 52. The minority of Sir *T. M.* at the time of the election was proved, and also that public notice thereof was given, both at the nomination and at the election. The committee resolved, that Sir *Thomas Mostyn* was not duly elected; and that *John Lloyd*, Esq. was duly elected, and ought to have been returned. They also resolved (after hearing counsel upon the question), that the election and return of Sir *T. Mostyn* did appear to them to have

been vexatious; but that it did not appear to them to have been corrupt.

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general.

The stat. 28 Geo. 3. c. 52. § 22. (a) directs, that in the several cases therein before mentioned, the costs or expenses of prosecuting or opposing the petition are to be ascertained in the following manner, *viz.* that on application made to the speaker, by any such petitioner or petitioners, or party or parties, as therein before mentioned, for ascertaining such costs and expenses, he is to direct the same to be taxed by two persons, of whom the clerk or clerk assistant of the house is always to be one, and one of the masters in chancery, one of the clerks in the court of king's bench, one of the prothonotaries in the court of common pleas, or one of the clerks in the court of exchequer (not being a member of the house) is to be the other.—And by stat. 53 Geo. 3. c. 71. § 10. (b) all reasonable costs (as between attorney and client) are to be allowed.

Costs, on application to speaker, to be taxed by the persons herein.

And by the same clause of the 28 Geo. 3. the persons so authorized to tax such costs and expenses are required to examine the same, and to report the amount thereof to the speaker; who, on application to him, is to deliver to the party

This report to be made to the speaker, who is, on application, to deliver to parties a certificate of the amount of the costs.

(a) For this stat. see *ante*,
33.

(b) For this stat. see *ante*,
58.

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Persons taxing costs to be entitled to certain fees.

or parties a certificate, signed by himself, expressing the amount of the costs and expenses allowed in such report; the persons so taxing such costs, and reporting the amount thereof, being entitled to such fees as shall be from time to time fixed by resolution of the house (a).

The law has made several provisions with respect to the costs in the cases where parties are made liable to pay them.

Parties entitled to recover costs may demand the whole amount from any person or persons liable, and in case of non-payment may recover the same by action, &c.

By the stat. 28 Geo. 3. c. 52. § 23. (b), the party or parties intitled to costs and expenses under the act, or the executors or administrators of such party or parties, may demand the whole amount thereof, so certified, as in the act is mentioned, from any one or more of the persons respectively, who are made liable to the payment thereof, in the several cases therein before mentioned, and in case of non-payment thereof may recover the same by action of debt, in any of his majesty's courts of record, at *Westminster*:—In which action it is to be sufficient for the plaintiffs to declare, that the defendant or defendants is or are indebted to him or them, (in the amount of the costs and expenses ascer-

How the plaintiff is to declare.

(a) See the resolution of the 2d July, 1813, *ante*, 201.

(b) For this stat. see *ante*, 34.

tained as before-mentioned,) by virtue of the act.

And the certificate of the speaker, under his signature, of such amount, together with an examined copy of the entries in the journals, of the resolution or resolutions of the committee or committees, are to be declared full and sufficient evidence in support of such action.

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Speaker's certificate, with entries in journal, and resolution of committee, to be evidence in support of action, &c.

By the stat. 28 Geo. 3. c. 52. § 24. (a), where the amount of such costs or expenses shall have been recovered from any person or persons, such person or persons may recover in like manner from the other persons or any of them, (if such there shall be,) who shall be liable to the payment of such costs or expenses a proportionable share thereof, according to the number of persons liable.

Persons against whom costs shall have been recovered may recover over rateably against other persons liable.

The stat. 53 Geo. 3. c. 71. § 11. (b) empowers the persons authorized and directed by the speaker, in pursuance of the 28 Geo. 3. c. 52. or of that act, to tax such costs, expenses, or fees, and also, any master in chancery, or any justice of peace, to take affidavits relative to such costs, expenses, or fees, or the taxation or non-payment thereof, and to administer the oath for taking such affidavit.

Persons authorized to tax costs, &c. empowered to take affidavits:

(a) For this stat. see *ante*, 34.

(b) For this stat. see *ante*, 58.

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Persons swearing falsely in such affidavits, guilty of perjury.

In actions for recovery of costs, &c. the speaker's certificate to have the effect of a warrant of attorney.

Court, on production of certificate, to enter judgment for the sum specified in such certificate to be due from defendant or defendants, in like manner as upon a warrant of attorney to that amount.

And by the same clause, persons convicted of wilfully false swearing in any such affidavit or affidavits are liable to the penalties of wilful and corrupt perjury.

The stat. 53 Geo. 3. c. 71. § 13. (a) enacts, that in any action, which shall be commenced for the recovery of any costs, expenses, or fees, which shall have been certified by the speaker in pursuance of that act, or that of 28 Geo. 3. c. 52, to be due and payable, the certificate so signed by him is to have the force and effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced is upon motion, and on the production of such certificate, to enter up judgment for the sum specified in such certificate to be due from the defendant or defendants in such action, in like manner as if such defendant or defendants had signed a warrant to confess judgment in such action to that amount.

The following points have been decided in actions, which have been brought for the recovery of costs in respect of election petitions.

Sir Henry Strachey, Bart. and another, v. Tur-

(d) For this stat. see *ante*, 59.

ley, and others, T. T. 46 Geo. 3. K. B.—There were two several petitions, signed by different persons, presented to the house of commons against the return of members to serve in parliament for the borough of *East Grinstead*, which petitions were referred to the same select committee for trial, who reported them both to be frivolous and vexatious:—It was holden that the costs cannot be taxed *jointly*, under the stat. 28 Geo. 3. c. 52; and, therefore, the speaker, having first certified a joint taxation of costs for a certain sum against all the petitioners, and having afterwards, by an amended certificate, apportioned how much of the first mentioned sum taxed was incurred by the sitting members, in opposing the two petitions *jointly*, and how much was so incurred by them in opposing each separately; the plaintiffs, by the advice of the court, (after argument upon the case, reserved for their opinion) submitted to enter nonsuits, as well in two several actions prosecuted against the respective petitioners, for the separate costs, certified against each, as also in a joint action against all, to recover the taxation certified against them all *jointly*.

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7 East, 507.

Costs in respect of several petitions relating to the same election cannot be taxed jointly, under the 28 Geo. 3. c. 52.

There was afterwards (E. T. 49 Geo. 3. K. B.) another action, by and against the same parties, in which it was holden, that both these cer-

11 East, 194.

Invalid certificates as to costs having been granted by speaker, a

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new and valid certificate may nevertheless be granted; and this by the speaker of a new parliament.

4 Maule and Selwyn, 234.

Where there is a petition against the return of a member, and also charging the returning officer with corruption and bribery, if the returning officer attend by his counsel, and the committee report the charges frivolous and vexatious, and the returning officer obtain the speaker's certificate, &c. debt lies for such costs.

tificates being invalid, by reason that the act only authorizes the costs to be taxed separately on each distinct petition, a new and valid certificate, ascertaining the separate costs incurred on each petition, might be granted by the speaker of a new parliament, the act mentioning the speaker generally.

Trueman v. Lambert, T. T. 55 Geo. 3. K. B.

It was holden that, upon a petition to the house of commons against a return of a member, and also charging the returning officer with corruption and bribery, if the returning officer attend by his counsel and agent before the select committee, and bring witnesses to defend himself against those charges, and the committee report that the charges appeared to them frivolous and vexatious, which resolution is entered in the journals, and the returning officer obtains the speaker's order and certificate, pursuant to stat. 28 Geo. 3. c. 52, ascertaining the amount of his costs and expenses, debt lies at his suit to recover them.

SECTION 17. *Scotland.*

THE different provisions which have been mentioned in this chapter apply also in respect

of petitions relating to elections for places in
Scotland.

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general.

In addition to the cases wherein petitions have or have not been reported frivolous or vexatious, there have been the following :

County of *Sutherland*. Mr. *Gordon* and Mr. *Mac Leod* had petitioned the house against the return of Lieutenant General *Grant*. The evidence, on which the case of Mr. *Gordon* principally depended, having been held by the committee to be inadmissible, his counsel withdrew any pretension to the seat, and therefore gave the committee no farther trouble. After this, the counsel on behalf of Mr. *Mac Leod* also said, that he had no evidence to offer to the committee, his intention being to bring the merits of Mr. *Mac Leod's* petition forward only in the event that General *Grant* was declared ineligible. Upon this, the counsel for General *Grant* applied to the committee, under the above act, by a special report to award costs to his client; and, after referring to the preceding case of *Bodmin*, he further stated, that another committee, in the late case of *Colchester*, came to a similar determination, the petition being mistaken in law as to the ineligibility of Sir *John Jackson*, on account of a supposed pension.

2Fras. 157. 173.
176. 185.

Where the evidence in support of the petition being holden inadmissible, and the petitioner upon such decision withdrew his pretensions, the petition was holden not to be frivolous or vexatious.

But where a petitioning candidate upon another petition offered no evidence, declaring his intention of coming forward only in the event of the other petitioner succeeding, the petition was holden frivolous and vexatious.

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general.

The committee determined that the petition of Mr. *Mac Leod* did appear to them to be frivolous and vexatious. They further determined, that the petition of Mr. *Gordon* did not appear to them to be frivolous or vexatious.

1 *Peck*, 251,
ante, 329.

Where petitioners declined offering evidence, and gave previous notice thereof to sitting member, petition holden not frivolous or vexatious.

The case of *Inverness*, 1803, may be added to those, where the petitioners declining to produce any evidence before the committee, and giving timely notice to the sitting members, the petitions have been reported not to be frivolous or vexatious.

SECTION 18. *Ireland.*

App.

cccxxxviii.

ccclxxix.

THERE are so many peculiarities, under the provisions of the statutes 42 Geo. 3. c. 106, and 47 Geo. 3. c. 14, with respect to the proceedings of select committees, in respect of *Irish* petitions, that it becomes eligible to make them the subject of a separate chapter.

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